

SILVERTOWN TUNNEL

Volume 8

8.122 Closing Statement

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Forms and Procedure) Regulations 2009

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The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
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Author: Transport for London

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1. INTRODUCTION

1.1 Purpose of this Document

1.1.1 The document Case for the Scheme (APP-093) was submitted in April 2016 as part of the suite of application documents. It explained its purpose to set out the need for the Scheme, explain how strategic options were assessed, and describe how the details of the scheme including the user charging proposals were developed. It then described the benefits of the scheme and outlined how impacts would be managed. The purpose of this Closing Statement is to conclude the Applicant's case by reference to the evidence which has been submitted and examined since the submission of the application. It makes reference to the application documents and updates to those documents submitting during the examination; responses to written questions; submissions made at the hearings and in response to action points; and additional documents submitted.

1.1.2 The examination has been extremely helpful in investigating the detailed effects, impacts and consequences of the Scheme and helping to test and refine the package of mitigation measures proposed. The examination has helped us strengthen the application. Overall, however, we respectfully suggest that the position set out in the Case for the Scheme has been tested and found robust.

1.1.3 With the benefit particularly of the enhanced commitments to mitigation which have been stimulated by the examination, the case for the grant of DCO consent is considered to be even stronger than it was at the time that the application was submitted.

1.1.4 This document will explain by reference to the examination documentation:

- that the Scheme is a national infrastructure project of particular significance;
- that the Scheme complies directly with the policy requirements of the NPS but is also strongly supported by London Plan and local planning policy;
- that there is a compelling need for the compulsory acquisition of land where outstanding land interests remain to be acquired;
- that the scheme would bring immediate and lasting benefits to the environment, quality of life and economy of a large part of East London

and would bring net benefits to all categories of those who use the existing river crossings and those who would use the Silvertown Tunnel; and

- that the impacts of the scheme in this context are notably limited, especially when regard is had to the extensive commitments made to mitigation, which are comprehensively secured in the proposed DCO and fully traceable and enforceable (as recorded in the Mitigation Route Map (REP6-062)).

1.1.5 A feature of the application has been the extent of agreement reached between the Applicant and directly affected parties. At Deadline 6 signed Statements of Common Ground have been concluded with 27 separate parties, whilst remaining issues with those with whom full agreement has not been reached have been very substantially narrowed and documented through successive written submissions (REP6-087). For details of the SOCGs see REP1-128 – REP1-150; REP2-064; REP2-065; REP3-009 - REP3-013; REP4-063; REP5-005; REP5-006; REP5-028 and REP6-084.

1.1.6 This Closing Statement of Transport for London draws on material already submitted to the examination and takes account of the written representations and submissions made by all interested parties in reaching its conclusion that the tests set for the decision maker in Section 104 of the Planning Act 2008 are fully met and that there is a particularly strong case for the grant of development consent.

1.2 Structure of this Document

1.2.1 This Closing Statement is structured as follows:

- Policy and Objectives;
- Transportation and Traffic;
- EIA;
- Socio Economic Considerations;
- User Charging;
- Compulsory Acquisition;
- Wording of the DCO;
- Conclusion.

2. THE SCHEME, ITS OBJECTIVES AND POLICY COMPLIANCE

2.1 Introduction

- 2.1.1 The Silvertown Tunnel Scheme is promoted by Transport for London (TfL) – the statutory highway and traffic authority for the TfL Road Network in London. TfL has a network management duty under the Traffic Management Act 2004 which requires it to make sure road networks are managed effectively to minimise congestion and disruption to vehicles and pedestrians. TfL also has statutory duties with regard to bus and public transport provision and is required to keep the provision of public transport services under review. As the body responsible for implementing the Mayor’s Transport Strategy TfL is required to ensure that services cater for growth, while maintaining ease of use, attractive frequencies and adequate capacity, as well as reliable services, good coverage and good interchange with other modes (Mayor’s Transport Strategy, 2010 proposal 23).
- 2.1.2 In pursuance of these duties, TfL has designed and promoted the Silvertown Tunnel Scheme. This document is not intended to be a comprehensive summary of the Applicant’s Case, but it does provide an explanation of how the applicant has addressed key matters which have been explored during the examination.
- 2.1.3 The Silvertown Tunnel Scheme (the Scheme) involves the construction of a twin bore road tunnel 1.4km long providing a new connection between the A102 Blackwall Tunnel Approach on the Greenwich Peninsula and the Tidal Basin Roundabout Junction on the A102 lower Lea Crossing/Silvertown Way. The Scheme is designed to accommodate large vehicles including double-deck buses and it would include a dedicated bus, coach and goods vehicle lane, which would enable TfL to provide additional cross-river bus routes.
- 2.1.4 The Scheme for which DCO consent is sought includes proposals to charge for the use of the Silvertown and Blackwall Tunnels for two reasons:
- to help manage the demand for both crossings; and
 - to help pay for the new tunnel.
- 2.1.5 The Scheme is being promoted to address the chronic congestion and severe reliability concerns which have been long term problems affecting this

part of London caused by the physical constraints and lack of capacity inherent in the Blackwall Tunnel.

2.2 Policy and transport context

- 2.2.1 The need for further cross river infrastructure in East London should be beyond question. There are 18 crossings in the 29km from Vauxhall Bridge to the M25 in West London but only 5 in the 25km from Tower Bridge to the M25 in the East¹. In West London, highway crossings are spaced on average 2km apart, in Central London the average distance is around 1km but in the East the average is 8km (three crossings in a 25km section) (see APP-093, para 2.2.7). The problematic consequences of the scarcity of crossings provide the motivation for the Scheme.
- 2.2.2 In the East, the river crossings are not only few in number but limited in capacity. The Rotherhithe and what is now the north bound bore of the Blackwall Tunnel were originally designed for horse-drawn traffic. A second bore was opened in 1967. The Blackwall Tunnel does not meet modern Tunnel design standards for size, safety or curvature and its narrowness means that vehicles over 4m (in the right hand lane and 2.8m in the left) cannot be accommodated, which rules out larger lorries and double-deck buses.
- 2.2.3 At the same time as suffering these physical constraints, the Blackwall Tunnel is the most heavily congested major route in London (APP-093, para 2.5.3) and the busiest of all river crossings in the capital (APP-093, Figure 2-7). Against this background, forecasts for the growth of population and the economy in East London will have a particularly significant effect (for example, it is forecast that the traffic in the southbound PM peak will increase from 104% of nominal capacity to 142% by 2021 (APP-093, para 3.4.3)).
- 2.2.4 In the Case for the Scheme, the need to supplement the capacity and operation of the Blackwall Tunnel is summarised under three principal headings, as follows:
- Transport Problem 1 – congestion;
 - Transport Problem 2 – closures and incidents;
-

¹ Case for the Scheme, para 2.2.7

- Transport Problem 3 – lack of network resilience (APP-093, sections 2.5 – 2.7).
- 2.2.5 In the past 20 years East London has seen sustained investment in public transport and capacity. Seven new rail crossings of the Thames in East London have been implemented in that period, with a further major service coming in the form of Crossrail. Notwithstanding this massive increase in capacity, however, the vehicular use of the Blackwall Tunnel has not reduced (APP-100, paras. 2.3.23-26). Detailed information on the increase in public transport capacity and the persistent high level of demand for the Blackwall Tunnel crossing is set out in the Transport Assessment at figure 3-4 and figure 4-14 (APP-086).
- 2.2.6 In response, planning policy has recognised the need for further infrastructure enhancements targeted at relieving the pressure on the Blackwall Tunnel.
- 2.2.7 Plans for an additional crossing of the River Thames in the vicinity of the Blackwall Tunnel have a long history. In 1995 and again in 1997 the principle of the Scheme was subject to a Safeguarding Direction issued by the Secretary of State. The most recent Safeguarding Direction was issued by the Government Office for London in May 2001 and has subsequently been transferred to the Mayor of London. The 2001 Safeguarding Direction is reproduced at Appendix B of the Planning Policy Compliance Statement (APP-094).
- 2.2.8 The evolution of planning policy support for a new crossing is set out in the Case for the Scheme from paragraph 3.2.2, including policy support in the Mayor's Transport Strategy since 2001.
- 2.2.9 Options development work was stimulated by the policy support and informed the preparation of policies in the London Plan. The scheme-specific, direct policy support for the application proposals set out in the up to date London Plan is a particularly important consideration in this case given the importance which the NPS attaches to relevant development plan policy at paragraph 3.27.
- 2.2.10 Support from some parties at the examination for the Silvertown Crossing Scheme is said to be conditional upon it forming part of a package of river crossings (REP5-007, 008, and 009). As TfL has set out in its comments on Borough Local Impact Reports and Written Representations (REP2-035 at paragraphs 2.4.1 – 2.4.5 and 3.2.13 – 3.2.17), however, the policy support for the Silvertown Tunnel is freestanding in the London Plan and not

conditional upon it forming part of any wider package. As TfL has explained, the Mayor is firmly committed to the delivery of further river crossings in East London (response to SWQ GA2.7 (REP4-051)) but it is the Silvertown crossing which is the subject of this DCO application and which falls to be considered on its own merits, its own business case and its own direct policy support.

2.3 Silvertown Tunnel – alternatives

- 2.3.1 Despite the length of the time over which the project has evolved and despite the detailed nature of the DCO examination, no party has promoted a meaningful alternative to the Silvertown Tunnel Scheme – and, of course, no alternative could meet the project specific policy requirement for the scheme set out in the London Plan.
- 2.3.2 The robustness of the scheme against other alternatives is testament to the exhaustive nature of the work undertaken to test and evolve options for the Scheme prior to the preparation of the DCO application. This process is explained in the Case for the Scheme at Chapter 3, which includes a detailed back-check at Appendix A of all potential options including, in particular, a “do nothing” option as well as options by different modes and crossings options further east away from the Blackwall Tunnel. Further analysis submitted to the examination has demonstrated:
- the very limited impact which options further east would achieve in terms of relief for the Blackwall Tunnel (APP-093, page 99); and
 - the ineffective nature of a so called “PT max” option (APP-093), page 109).
- 2.3.3 Detailed scheme development is described in Chapter 5 of the Case for the Scheme, which explains how scheme development options were iterated to optimise the application proposals.
- 2.3.4 To a limited extent, this process has continued through the examination with a small number of non-material changes proposed to the application and accepted by the Examining Authority (ExA Decision on the Acceptance of the 5 proposed NMCs (PD-015).
- 2.3.5 Throughout the process of scheme development it is apparent that extensive efforts have been made to devise an effective scheme but one which minimises its adverse impacts. For these purposes, the Project Objectives have been particularly helpful as a framework against which to test the benefits of the scheme and the value or otherwise of alternatives.

2.3.6 The applicant's response to written questions (REP3-030) explains the structured option appraisal process followed in the consideration of options, whilst the Applicant's response (REP6-083) set out in more detail the economic issues taken into account in the consideration of potential strategic alternatives. The process of assessment has been rigorous and no alternative or combination of alternatives has come close to being capable of meeting the full range of Project Objectives.

2.4 The application for development consent

2.4.1 The Silvertown Tunnel Scheme would not normally qualify as an NSIP because it does not relate to a highway for which the Secretary of State (or Highways England) is or will be the highway authority. However, in a direction dated 26 June 2012 made under Section 35 of the Act, the Secretary of State determined that the Silvertown Tunnel is of national significance. Her reasons given for doing so are particularly significant. They were (in summary):

2.4.2 London as an engine for economic growth nationally – the fact that the proposed development is intended to have a significant impact in reducing both current and forecast congestion in London means it may have a corresponding impact on the country as a whole:

- the projected growth of London – given the position of London as an economic driver nationally any decrease in efficiency in London's transport network may have a consequential detrimental impact nationally;
- current congestion at the Blackwall Tunnel is having a direct impact on the Strategic Road Network – the Blackwall Tunnel is currently suffering from severe congestion leading to delays for traffic entering and exiting the Tunnel and diverting to other crossings which can have detrimental effects on the strategic road network; and
- the size and nature of the Silvertown Tunnel and comparison to other NSIPs.

2.4.3 A copy of the Direction is provided at Appendix A of the Planning Policy Compliance Statement (APP-094)). It is apparent that the Scheme is nationally important and that there is no other scheme which could address the important issues set out by the Secretary of State.

2.4.4 The Planning Policy Compliance Statement contains a careful review of the Scheme against all of the policy requirements of the NPS. It concludes:

“The Scheme has been worked up through careful scheme selection and design development. Its design has been informed by extensive public consultation, engagement with stakeholders and environmental assessment. A strong design vision and objectives have ensured that the scheme would meet the standards of good design and integrate effectively with its surroundings, enhancing local and strategic connectivity.

The Scheme has been thoroughly assessed against the expectations of the NPS and mitigation measures have been embedded or proposed to address its impacts.

Accordingly, the Scheme meets the requirements of Section 104 of the Planning Act 2008 and development consent should be granted, subject to the detailed terms set out in the draft DCO...”

- 2.4.5 This assessment has been brought up to date in the NPS tracker (REP6-080) which comprehensively reviews the application proposals against the detailed requirements of the NPS with the benefit of the information which has emerged through the examination and in the light of the up to date mitigation embedded in the revised draft DCO. The planning policy conclusion is now even more strongly in support of the grant of DCO consent.

3. TRANSPORTATION AND TRAFFIC

3.1 Introduction

3.1.1 This section explains the transport benefits which the Scheme will deliver. It also describes how the transport modelling has been undertaken and how key issues associated with the modelling have been explored during the examination.

3.2 Assessed effects

3.2.1 The Transport Assessment for the Scheme set out the Applicant's modelling of the Reference Case, which has been accepted by key Interested Parties as being robust and fit for purpose, and demonstrates that without specific intervention, the severe problems experienced today at the Blackwall Tunnel cannot be expected to improve over the coming years, and indeed conditions will deteriorate further.

3.2.2 The Transport Assessment noted that the Scheme would have very positive effects on these problems, effectively eliminating delays, reducing the incidence of closures, and greatly reducing the impact of closures when they do occur. It would also facilitate a transformational improvement in cross-river public transport by enabling the implementation of new bus services.

3.2.3 The Transport Assessment also highlighted the overall modest scale of impacts on overall levels of vehicle travel, and the low likelihood of impacts on junctions elsewhere on the network – both of which reflect the careful application of user charges to minimise the risk of induced demand.

3.2.4 Congestion (TA)Resilience (TA)PT accessibility (TA)User charge means minimal changes to overall levels of travel, and a likelihood of only minor offsetting impacts on surrounding roads / junctions etc (see M&MS later).Although the forecasting work underpinning these analyses has been examined in detail through the examination, there has in fact been no substantive suggestion that the Scheme would not achieve these very positive outcomes.

3.2.5 Through the examination, further assurance has been given that these impacts will be secured through changes to the Charging Policies and Procedures (see below), M&MS (see below), and securing of a minimum commitment to bus provision coupled with an objective to deliver the Assessed Case benefits.

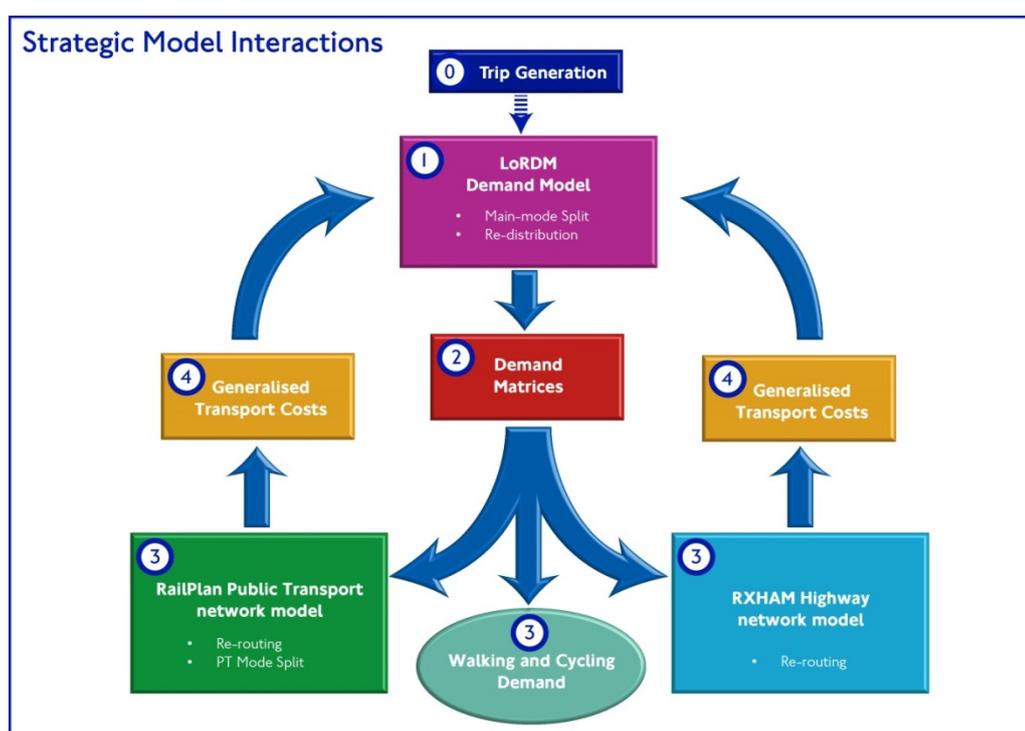
3.3 Modelling future transport effects

3.3.1 The transport modelling and analytical work undertaken to enable a full appreciation of the effects of the Scheme has been robust and comprehensive. It also conforms to all relevant guidance.

3.3.2 As set out in the Applicant’s response to FWQ TT.1 (REP1-174), the Applicant has a long established strategic transport modelling capability that has underpinned numerous major schemes, land-use development impact studies and TfL / GLA strategies – including those sponsored by London Boroughs, Private Developers and the Department for Transport, as well as TfL itself.

3.3.3 The Applicant’s team comprises a range of experts in modelling. These experts were responsible for the modelling of the central London Congestion Charging scheme, and have successfully modelled the Dartford Crossing in the strategic models.

3.3.4 The figure below summarises the structure of the models that were developed by the Applicant for the assessment of the Silvertown Tunnel Scheme. More detail can be found in the Applicant’s response to FWQ TT.1 (REP1-174).



- 3.3.5 The RXHAM highway model is a variant of the ELHAM sub-regional highway model for East London that has been significantly enhanced for the specific requirements of the assessment of the Silvertown Tunnel scheme – including the assessment of user charging as well as particularly congested highway corridors (e.g. the Blackwall Tunnel and surrounding roads), as set out in the Applicant’s response to FWQ TT.4 (REP1-174).
- 3.3.6 The original ELHAM study area was expanded to ensure the RXHAM model covered all potential choices of route undertaken by users of all key river crossings in East London, as set out in the Applicant’s response to FWQ TT.6 (REP1-174).
- 3.3.7 The models have been developed in line with the Department for Transport’s WebTAG guidelines. In addition, as outlined later in this section, the response of the model to user charges has been shown to be consistent with benchmarks from observed studies of users’ toll response.
- 3.3.8 The work has benefited from extensive expert scrutiny – for example, TfL developed the Silvertown models in line with advice from Dr Denvil Coombe, a leading expert in UK transport modelling and a key advisor to the Department for Transport before his retirement. In addition, the models were subjected to two independent external audits, both undertaken by consultants Steer Davies Gleave, as set out in the Applicant’s response to FWQ TT.4 (REP1-174).
- 3.3.9 The work has also been subjected to intensive scrutiny during the examination process itself, both by Interested Parties and by the Examining Authority, which has ensured that important issues within the modelling approach and the overall modelling system were fully explored. The Applicant has provided expert evidence to assist the Examining Authority in probing these details.
- 3.3.10 This scrutiny has been extremely helpful in understanding the effects of the Scheme in detail, and has highlighted areas where changes to the Scheme itself could help to ensure the best possible outcomes (the low income discount, for example).

3.4 Modelling uncertainty

- 3.4.1 Through the examination, the topic of modelling uncertainty has been considered with particular thoroughness by the Examining Authority and many Interested Parties. The Applicant has been pleased to consider this issue and recognises its importance, since many of the effects on which the

Scheme's assessment rests depend in turn on the level of confidence that can be attributed to forecasting.

- 3.4.2 The Applicant has readily acknowledged at every stage during the development and Examination of the Scheme that there will always be some uncertainty in traffic forecasting. The most immediate means of mitigating this uncertainty is to ensure that modelling is carried out in accordance with best practice and subject to rigorous sensitivity testing, and as outlined previously the Applicant has set out ample evidence to demonstrate that it has done this.
- 3.4.3 Interested parties have questioned certain aspects of the modelling in particular, for example the values of time adopted. As the Applicant has made clear, the values of time it has used are consistent with WebTAG, having been benchmarked against locally collected stated preference data, which has provided no strong evidence to depart from the WebTAG values (as is required by WebTAG Unit 4, para 3.2.6). (See REP2-051).
- 3.4.4 No interested party has provided an alternative set of values of time, nor advanced any other strong evidence to support a departure from WebTAG values.
- 3.4.5 Another area which has been considered at some length is growth. The modelling assumes London's population and employment will grow in line with GLA projections (Further Alterations to the London Plan) and so considers committed development in accordance with WebTAG guidance. These growth assumptions take into account the high levels of growth expected at the key development sites (including Opportunity Areas) across east London in particular.
- 3.4.6 In addition, as outlined in the Applicant's response to SWQ TT.2.3 (REP4-055), a high growth sensitivity test has been undertaken which considers the full growth potential of the Opportunity Areas across London – over and above the GLA projections assumed in the Reference Case. These key sites include the Royal Docks, Greenwich Peninsula, Canada Water, and Old Kent Road.
- 3.4.7 The ability of the modelling to forecast responses to the imposition of user charges has been another area of particular attention. As set out in REP2-051, the model shows a demand response to user charging that in line with observed benchmarks seen for other forms of charged transport infrastructure of a similar nature around the world. This benchmarking

analysis goes beyond the requirements set out in WebTAG with regard to demonstrating the suitability of the model.

- ..8 The Applicant undertook a detailed assessment of these factors alongside the other key sources of possible uncertainty, and provided quantification of their probability of occurrence as well as their likely effects. This exercise included sensitivity testing of their key effects as set out in REP3-027 as well as the Applicant's response to SWQ TT.2.3 (REP4-055).
 - ..9 The expansion factors used to find the AADT and AAWT are calculated in accordance with the guidance given in DfT's Transport Analysis Guidance WebTAG Unit M1.2 Data Sources and Surveys, section 3.3.41, which explains the process of calculating AADT and AAWT from a short period count and how to factor that short period count to find the AADT and AAWT. This is summarised in the Applicant's response to FWQ TT.2 (REP1-174).
- 3.4.10 Aside from these areas of methodological focus, a clear recognition that uncertainty cannot ever be fully eliminated underpins the Applicant's proposed approaches to user charging, monitoring and mitigation, and the development of complementary bus services.
- 3.4.11 The examination has allowed the Applicant to put forward evidence to demonstrate that in all reasonably foreseeable scenarios, the traffic effects of the Scheme can be controlled to the levels reported in the TA and ES, without the need for a prohibitive increase in user charge, such that the Examining Authority can be unusually certain that the effects of the Scheme in operation will be similar to those on which its assessments are based.

3.5 Mitigation of adverse traffic effects

- 3.5.1 The Applicant's approach to identifying and addressing any adverse traffic and traffic-related Scheme impacts is set out in the Monitoring and Mitigation Strategy (M&MS) (REP6-068) which is secured by Requirement 7 of the DCO.
- 3.5.2 The M&MS provides a robust basis for monitoring the impacts of the Scheme in operation and implementing appropriate mitigation for any localised traffic and traffic-related impacts which arise as a result of the Scheme.
- 3.5.3 Rather than determine a package of pre-opening mitigation works now, the process of identifying mitigation will be driven by a refreshed assessment of Scheme impacts using the latest available information and will lead to a better outcome than specifying mitigation measures now because significant

growth and change is expected in this part of London over the next few years. TfL will then identify and develop any necessary localised mitigation measures in consultation with STIG members and ensure these measures can be implemented before the Scheme opens for public use.

- 3.5.4 The refreshed assessment will also be used to inform the opening user charges and opening year bus network, as explained further below.
- 3.5.5 The pre-opening traffic-related mitigation measures will be submitted for approval by the Secretary of State for Transport. This has been agreed with the host boroughs of Greenwich, Newham and Tower Hamlets as appropriate means of ensuring independent oversight.
- 3.5.6 Once the Scheme has opened for public use, the process of identifying any further mitigation that is necessary will be driven by the ongoing monitoring of Scheme impacts. The Applicant will undertake extensive monitoring of the traffic, air quality (including carbon), noise and socio-economic impacts of the Scheme in operation, for a minimum of three years following opening. Should this monitoring reveal the Scheme is having an adverse impact, appropriate measures to mitigate the impact will be identified and developed in consultation with STIG members.
- 3.5.7 To further enhance the process, a series of traffic related trigger thresholds have been set to aid the identification of adverse impacts. The Applicant will also appoint independent air quality and noise experts to review the air quality and noise data respectively, and determine whether mitigation measures are required.
- 3.5.8 Significant amendments and additions have been made to the M&MS throughout the examination in response to engagement with interested parties and requests from the Examining Authority. The most notable change was the merging of the Monitoring Strategy (APP-098) and the Traffic Impacts Mitigation Strategy (APP-099) into a single document at Deadline 4 to make clearer the linkages between monitoring and mitigation. There is agreement with the three host boroughs of Greenwich, Newham and Tower Hamlets on the content of the M&MS.
- 3.5.9 Numerous requests for additional monitoring locations have been received from interested parties throughout the examination. The Applicant has assessed each of these requests on their merits; in some cases they have been added to the document where there is sufficient evidence for doing so, whilst in other cases they have not been included because there is very little evidence of the Scheme having an impact on the location and they are some

distance away. The Applicant considers that the monitoring set out in the M&MS is very extensive, covering the key strategic routes as well as various potential diversion routes to other crossings, and will provide TfL and STIG members with an excellent understanding of the impacts of the Scheme in operation.

4. USER CHARGING

4.1 Introduction

4.2 Introduction

4.2.1 This section explains the role that the user charge plays in delivering the project objectives, and reasons why a flexible approach to charging is necessary. It explains the robust controls that will apply when setting and varying the charges and the rationale for the Applicant's approach to discounts and exemptions.

4.3 Reasons for the user charge

4.3.1 The user charge at the Silvertown and Blackwall Tunnels is an essential component of the Scheme. The role of the charge is explained in the Charging Statement (APP-097) which was submitted with the application.

4.3.2 That document explains that the primary purpose of the user charge is to manage traffic demand for the river crossings. By managing this demand, the other effects of the Scheme, including the environmental and socio-economic effects, can be managed. The secondary purpose of the user charges is to pay for the design, construction and operation of the Scheme. The Charging Statement explains how the user charge will perform these functions (APP-097) and sets out the rationale for the Applicant's approach.

4.4 The need for a flexible approach to user charging

4.4.1 The charges which the applicant considers are likely to apply when the Scheme opens for public use are set out in Appendix B of the Charging Policies and Procedures document (REP6-060). However, these charges are not fixed and the actual charges will be set nearer to the time that the Scheme opens in accordance with the procedures set out in the Charging Policies and Procedures (REP6-060). Thereafter, the charges will be kept under review and will be varied as necessary to ensure they are set at a level which best delivers the Project Objectives.

4.4.2 The user charging provisions enable TfL to impose variable charges for different vehicles types, and for different times of day and for a wide range of other factors. This flexibility ensures that the charge functions as a powerful and flexible tool for maintaining the Project Objectives over time.

- 4.4.3 The benefits of this flexible approach to charging have been recognised throughout the examination. The flexibility enables the charges to respond to changing circumstances in London and the UK over the lifetime of the Scheme.
- 4.4.4 The Applicant has carried out a variety of sensitivity tests which modelled different future scenarios. These tests demonstrate that the user charge remains effective in different scenarios and that adjustments to the charge can effectively control traffic and associated environmental effects (see the Applicant's response to SWQ TT2.3 (REP4-055) and the Applicant's submissions at the issue specific hearing on 7 December 2016 (agenda item 5 REP2-037)).

4.5 Controls on setting and varying the user charge

- 4.5.1 Whilst the importance of flexibility has been widely recognised, the Applicant also recognises that the process for setting and varying the user charges should be subject to clear controls and take place within clearly defined parameters.
- 4.5.2 This is achieved through the provisions of the Charging Policies and Procedures (REP6-060) which TfL is required to comply with by Article 52 of the DCO. The document contains 15 Policies and 5 Procedures which TfL is required to comply with. In particular, the document provides that the decision to approve the user charges lies with the TfL Board. In taking this decision, the Board must have regard to the views of STIG members and may only approve the initial user charges if the refreshed assessment has demonstrated that the proposed charges will not give rise to materially new or materially different effects to those reported in the ES (see Policy 10).
- 4.5.3 The Charging Policies and Procedures document has been refined a number of times throughout the examination to address comments raised by the ExA and other interested parties. The principal elements of these refinements are summarised below:
- 4.5.4 First written question FWQ DC.71 asked for greater clarity about the relationship between the Charging Statement (APP-097), the Charging Policy (APP-107) and the Monitoring Strategy. The Applicant responded to this by submitting a revised version of the 'Charging Policy' at Deadline 1 (renamed 'Charging Policies and Procedures' (REP1-123)) to more clearly identify the provisions that TfL is required to comply with under article 52 of the DCO.

4.5.5 The revised version also:

- contained an express obligation for TfL to impose user charges to the extent that they are necessary or expedient to achieve the Project Objectives.
- set out a user charging assessment framework (UCAF) that must be used by TfL when considering the extent to which proposed charges and any variations assist with achieving the Project Objectives; and
- more clearly explained that the Assessed Case charges represent the starting point for the opening user charges, and that a refreshed assessment will be undertaken before the Scheme opens to determine whether any changes to the charges are required to more effectively deliver the Project Objectives.

4.5.6 The Applicant also submitted additional evidence at Deadline 1 to describe how the Assessed Case charges have been developed (see 'Selecting the User Charges for the Assessed Case' - Appendix A of the Applicant's response to socio-economic FWQs (REP1-176)).

4.5.7 Agenda item 3 of the issue specific hearing on the dDCO on 19 January 2017 sought greater clarity from the Applicant as to the procedures and principles that govern amendments to the user charges (REP3-017 and Action Point 3 (EV-031)).

4.5.8 The Applicant provided this clarification in the 'Note on Varying User Charges' which forms Appendix A of the Applicant's Written Summary of the 19 January 2017 hearing (REP3-017).

4.5.9 A further version of the Charging Policies and Procedures was submitted at Deadline 4 (REP4-039) to provide for a low income discount and an initial waiving of the account registration for small businesses and residents in the host boroughs.

4.5.10 The Deadline 4 version also imposed an additional obligation on TfL to review the user charges after 12 months of operation and to make amendments which are necessary to mitigate impacts which were not predicted by the pre-opening modelling. This 12-month review is an important mechanism whereby the actual monitored impacts of the Scheme will be used to check and, if necessary, amend the charges to ensure the Scheme is performing in accordance with forecasts.

4.5.11 A further iteration of the Charging Policies and Procedures was submitted at Deadline 6 (REP6-060).

4.5.12 The controls set out in the Charging Policies and Procedures mean that the charges will always be set with the benefit of monitored data and the oversight of independent STIG members as well as the TfL Board.

4.6 Discounts and exemptions

4.6.1 The Assessed Case charges provide for a range of discounts and exemptions (Appendix B, REP6-060). The rationale for the Applicant's approach to discounts and exemptions is set out in section 4 of the Charging Statement (APP-097).

4.6.2 During the examination the Applicant has submitted a range of further evidence related to discounts and exemptions.

4.6.3 The reasons for not having a local residents' discount, and the impacts of having for one, were discussed in the Applicant's response to FWQ SE.2 (REP1-176).

4.6.4 In response to Action Point 17 of the issue specific hearing on 17 January 2017, the Applicant provided a note explaining the modelling undertaken of categories proposed for exemption from the charge (REP3-015).

4.6.5 The Applicant's response to SWQ Traffic TT.2.8 explained the implications of exemptions on the efficient operation of the Scheme (REP4-055).

4.6.6 The Motorcycle Action Group made submissions throughout the examination that motorcycles should be exempt from the charge. The Applicant's response to this point is set out in the response to SWQ GA2.4 (REP4-051) and in the Response to Action Point 1 from OFH of 28 March 2017 (REP6-076).

4.6.7 The Motorcycle Action Group made submissions throughout the examination that motorcycles should be exempt from the charge. The Applicant's response to this point is set out in the response to SWQ GA2.4 (REP4-051) and in the Response to Action Point 1 from OFH of 28 March 2017 (REP6-076).

4.6.8 In recognition of the impact that the user charge may have on some low income users who are not able to take advantage of the public transport benefits delivered by the Scheme, a low-income discount introduced was introduced at Deadline 4 (Policy 6 of the Charging Policies and Procedures), together with a waiving of the account-registration fee for eligible small businesses and residents in the host boroughs (Policy 5) (REP6-060).

4.7 Legal basis for charging

- 4.7.1 At the issue specific hearing held on 19 January 2017 Thomas Hill QC made submissions on behalf of LB Newham questioning the inclusion in the DCO of provision to charge users of the Blackwall Tunnel. The submissions are set out in Appendix 4 of the material submitted by LB Newham at Deadline 3 submission (REP3-035).
- 4.7.2 The Applicant provided its initial response to LB Newham's oral submissions at Appendix B of the Applicant's Written Summary of the ISH (REP3-017). Following receipt of Newham's written submissions, the Applicant provided an expanded response at Deadline 4 - see Appendix A of the 'Document Explaining the dDCO Amendments' at Deadline 4 (REP4-043).
- 4.7.3 The Applicant's view is that LB Newham's submissions are based on misunderstanding of both the provisions of the Planning Act 2008 and, indeed, national policy as set out in the NN NPS. The Applicant's submissions explain the clear legal basis on which the DCO may include provision authorising road user charges for vehicles using the Silvertown and Blackwall Tunnels.
- 4.7.4 The Applicant relies on sections 120(3) and 120(5)(c) of the Act which provide that a DCO may make provision "relating to or to matters ancillary to" the development for which consent is granted (s. 120(3)) and "include any provision that appears to the decision-maker to be necessary or expedient for giving full effect to any other provision of the order" (s. 120(5)(c)).
- 4.7.5 Paragraph 18 of Schedule 5 to the Act makes clear that such provisions may include "charging tolls, fares and other charges", and section 144(2A) confirms that such charges may include "charges in respect of the use or keeping of motor vehicles on roads."
- 4.7.6 The Applicant's evidence has been clear throughout that road user charging of the Blackwall Tunnel is necessary for the proper and effective road user charging of the Silvertown Tunnel itself. Furthermore, it is clear on the Applicant's evidence that, to give 'full effect' to the proposed road user charging at the Silvertown Tunnel, it is 'necessary' or 'expedient' to also charge users of the Blackwall Tunnel. Neither LB Newham nor any other borough council has challenged that proposition.
- 4.7.7 LB Newham has stated at Deadline 6 that its position on this issue "remains as previously submitted" (REP6-023). Nevertheless, LB Newham has not pursued this point with any conviction during the examination and its position

is contradictory. Whilst questioning the lawfulness of the user charges they also suggest the matter could be addressed by measures to mitigate impacts on affected communities in the Borough (see paragraphs 17 and 18 REP3-035).

- 4.7.8 For the reasons set out in REP4-043, the Applicant considers LB Newham's submissions on this issue are flawed and that the Act provides a clear legal basis for authorising user charges at both the Silvertown and Blackwall Tunnels.

5. SOCIO-ECONOMIC CONSIDERATIONS

5.1 Introduction

5.1.1 This section explains how the economic and socio-economic impacts of the scheme have been assessed and describes the benefits that the Scheme will deliver.

5.2 The assessment of socio-economic effects

5.2.1 The economic analysis underlying the Scheme has been based on the DfT's Transport Analysis Guidance (TAG) – see APP-100. Socio-economic impacts have been assessed using TAG guidance unit A4.2 (see APP-103 and 104), as well as bespoke analysis which considers the specific impacts on low income users of the Scheme (REP3-024).

5.3 Socio-economic benefits of the scheme

5.3.1 Residents and businesses currently experience severe congestion and delays on a regular basis at the Blackwall Tunnel, as well as additional, unpredictable, delays from poor network reliability and resilience. These problems are expected to worsen in the future as east London's population and economy grows.

5.3.2 The physical constraints of the Blackwall Tunnel, as well as the very poor levels of network reliability, also mean that the provision of cross-river bus connections are currently very limited compared to other locations further west.

5.3.3 The Regeneration and Development Impact Assessment (APP-102) demonstrates that the difficulties associated with crossing the river in east London, both by highway and because of the limited bus network, constrain the ability of residents to access employment opportunities and services on the opposite side of the river. In particular, low income users are almost twice as likely as other users to never cross the river, with the poor level of cross-river bus services a contributing factor in this.

5.3.4 Furthermore, businesses experience common problems from cross-river travel including missing time-critical deliveries, meetings and appointments; staff being regularly late for work, and a more limited customer and supplier base. All of these problems impose additional costs or constrain revenue, limiting the potential for much needed future investment and employment generation in east London.

- 5.3.5 The Scheme will directly address these problems for both residents and businesses, by eliminating congestion and improving journey time reliability and network resilience. It will also allow TfL to deliver a step change in the provision of cross-river bus services. The monetised benefits of faster journey times generated by the Scheme are significant and are considerably larger than the Scheme costs.
- 5.3.6 The Scheme has a very high Net Present Value (NPV), of some £967m, rising to some £1,230m with reliability benefits included (Summary Table 1 of the Outline Business Case, APP-100). This NPV is calculated in line with TAG guidelines, and takes into consideration the charges paid by users and associated revenue, as well as all investment and operational costs. The applicant consequently regards the scheme as very high value for money.
- 5.3.7 The applicant has shown that a high NPV is retained in the 'low' and 'high' growth sensitivity tests providing further assurance that the Scheme is high value for money if growth was to be different to that forecast (Summary Tables 7 – 10 of the Outline Business Case, APP-100).
- 5.3.8 The distribution of net user benefits (benefits less user charges) is such that all user classes (commuting, business and other trips) have positive net benefits over the 60 year appraisal period. This amounts to £1,086m net benefit in total and £1,343m with reliability. Businesses are expected to benefit by £503m, commuters by £291m and 'other' non business trips by £549m (Summary Table 3 of the Outline Business Case, APP-100).
- 5.3.9 The geographic distribution of benefits is such that residents and businesses of the Host Boroughs gain the most from the Scheme (Table 3.1 – Distribution of User Benefits note, REP2-042)). This is because most users of the Blackwall Tunnel live in the Host Boroughs, whilst the proposed bus network and its associated benefits are also focused on the Host Boroughs. The majority of benefits are focused on those areas which are the most deprived (Table 2-1 of Distribution of User Benefits note, REP2-042).
- 5.3.10 In addition to user benefits, the Scheme will also benefit the labour, product and land markets. These are known as Wider Economic Impacts and are estimated to be worth an additional £90.4m over the appraisal period (S7, Outline Business Case, APP-100).
- 5.3.11 Furthermore, the improvements in economic performance expected to be facilitated by the Scheme are likely to make east London more attractive to inward investment and to facilitate the faster delivery of development. It is estimated that the Scheme will result in a net increase of 3,000 jobs within

east London by 2041. The majority of those jobs would be taken up by local residents, with 2,200 going to those who live within the 'Regeneration Area' in east London (as defined in the Regeneration and Development Impact Assessment (APP-102)).

- 5.3.12 The increased levels of bus services enabled by the Scheme would also improve access to existing jobs, supporting an additional 750 residents into employment. The Scheme would therefore increase the number of Regeneration Area residents in employment by a total of 2,950 by 2041.
- 5.3.13 In addition to this, the total number of direct, indirect and induced employment created by the construction activity of the scheme is expected to be in the region of 1,248 jobs (See section 7.6.48 of the Environmental Statement, APP-031).
- 5.3.14 A distributional impacts appraisal to assess the likely distribution of Scheme benefits among specific social groups has been undertaken. User benefits were assessed as moderate beneficial for all income groups; noise impacts were assessed as slight adverse for the most income deprived quintile, but moderate adverse for other income groups and neutral for children. Air quality impacts were scored as large beneficial for the most income deprived groups. Accident impacts were assessed as neutral for cyclists and motorcyclists and slight beneficial for pedestrians, children, older people and young adult males.
- 5.3.15 Severance impacts were assessed as slight beneficial for older people, moderate beneficial for children and disabled people and large beneficial for people in households without a car. Accessibility impacts were assessed as slight beneficial for all sensitive groups assessed.
- 5.3.16 Without the Scheme, all of these benefits would be foregone.

5.4 The bus strategy

- 5.4.1 The Assessed Case bus network was developed through a 'bottom-up process', looking at ways in which cross-river buses could improve public transport links between east and south-east London (see Appendix F of the Transport Assessment (APP-086)).
- 5.4.2 As noted in the Transport Assessment Appendix F paragraph F5.2 (APP-087), the routes were indicative of what may be achieved, and further work on operating cost, passenger demand and journey times was required, using the principles of bus network planning, to optimise the proposed network

before individual bus route enhancement can be consulted on and agreed. This work is planned in the 'refresh' of the case closer to the year of opening.

- 5.4.3 The Applicant has committed in Requirement 13 of the DCO to a minimum bus network of 20 cross-river buses per hour for the duration of the monitoring period, and has explained how the indicative Assessed Case bus network was developed and why a minimum opening year network is appropriate. The Applicant has also shown in responses to Action Points 2 and 4 of the Hearing on 28 March 2017 (REP6-082) that the economic and transport impacts of the minimum opening year bus commitment deliver very similar outcomes to the Assessed Case.

5.5 Low income groups

- 5.5.1 The Scheme will provide significant net benefit for low income groups. The Applicant's paper 'Impact of the Scheme on Low Income Residents' (REP3-024) explains that the greatest share (71%) of the total user benefits of the Scheme accrues to low income groups, mostly as a consequence of the enhanced public transport opportunities it provides. Furthermore, paragraph 2.2.2 of the Distribution of User Benefits note (REP2-042) explains that almost all of the 20% most deprived areas in the Study area will see net benefits from the scheme'.
- 5.5.2 Under the Assessed Case, although user benefits for low income public transport users are estimated at more than £12m in 2021, user disbenefits for low income highway users are estimated at £-200,000, which is an average disbenefit of just -5p per person cross-river trip (SWQ TT2.7). This is because the time saving benefits are slightly less than the cost of the user charge.
- 5.5.3 To address this, the Applicant has committed to a low income discount for residents of the Host Boroughs (see the Charging Policies and Procedures (REP6-060) . The exact level of discount will be defined closer to scheme opening, but must be not less than 50% of the user charge.
- 5.5.4 The impact of the low income discount and the minimum commitment to 20 buses per hour on low income groups has been set out in the Applicant's response to LB Newham and RB Greenwich's Deadline 6 submissions. This states that low income public transport benefits reduce very slightly to £11.3m, whilst low income highway benefits increase slightly to £0.0m, as the low income discount reduces journey costs for these users. Low income highway users therefore do not disbenefit from the Scheme.

5.5.5 There is expected to be very small amounts of redistribution by highway users, including low income highway users, to avoid the user charge. Table 1 of the response to Action Point 2 of the Hearing on the 28th March shows that there are just 180 low income users who redistribute their journey (2.5% of low income cross river highway trips). This falls to just 110 low income users who redistribute their journey (1.4% of low income cross river highway trips) when the low income discount and 20 buses per hour are included (REP6-073, pages 137-149).

5.5.6 Furthermore, as set out above, the Scheme would increase the number of Regeneration Area residents in employment by a total of 2,950 by 2041, which will reduce unemployment. This is likely to benefit low income groups disproportionately.

5.6 Socio-economic conclusion

5.6.1 The Scheme will directly address the long-standing and daily problems experienced at the Blackwall Tunnel for both residents and businesses, by eliminating congestion and improving journey time reliability and network resilience, and will allow a step change in the provision of cross-river bus services. In this respect the Scheme clearly delivers the core NPS requirements around reducing congestion, supporting growth, and improving resilience, reliability and connectivity through improved capacity.

5.6.2 The monetised benefits generated by the Scheme are significant and are considerably larger than the Scheme costs. There are also very significant monetised reliability benefits as well as considerable Wider Economic Impacts and other resilience benefits.

5.6.3 All user classes (commuting, business and other trips) have positive net benefits over the 60 year appraisal period, and most of these benefits are experienced by residents and businesses of the Host Boroughs, and in particular areas of high deprivation in these boroughs.

5.6.4 The Scheme clearly supports national and local economic growth and regeneration in the most disadvantaged areas of London. It will facilitate economic growth by bringing businesses closer to their workers, their markets and each other.

5.6.5 These improvements in economic performance facilitated by the Scheme are likely to make East London more attractive to inward investment and to facilitate the faster delivery of development, with an expected increase of

3,000 jobs by 2041, and an additional 1,248 jobs created by the construction activity for the Scheme.

- 5.6.6 The Scheme would provide significant net benefit for low income groups, with the greatest share (71%) of the total user benefits of the Scheme accruing to these users. The Applicant has also proposed a low income discount for residents of the Host Boroughs to mitigate any negative effects on low income highway users.
- 5.6.7 Finally, the Applicant has committed to a minimum opening year bus network of 20 cross-river buses per hour, and has shown that this is likely to deliver very similar economic outcomes to the Assessed Case.

6. ENVIRONMENTAL CONSIDERATIONS

6.1 Introduction

6.1.1 This section of the report provides a summary of the key environmental topics that have been examined by the ExA. It considers the outcomes of the assessment and how issues raised by stakeholders have been addressed throughout the examination.

6.2 Air quality

6.2.1 The impacts of the Scheme on air quality were reported in Chapter 6 of the Environmental Statement (ES) (APP-031), this assessment was updated prior to the commencement of the Examination on the 5th October 2016 (AS-022) to take account of new base year 2012 traffic data. The assessment was also updated at Deadline 2 to include the impact of the updated Defra Emission Factor Toolkit (EFT), the over height vehicles and the commitment on Euro VI or equivalent buses (REP2-041).

6.2.2 The assessment of construction-phase impacts presented in the ES (AS-022) encompassed construction dust, odour, gaseous emissions from Non-Road Mobile Machinery and construction vehicle emissions. It was concluded that for each of the individual aspects of the construction phase assessment, that residual impacts following recommended mitigation would not be significant. Emissions from river barges expected to be used in the construction phase were screened out and deemed not significant; further justification for this was provided in section 6.6 of the ES (AS-022) and orally at the Air Quality, Noise and Other Environmental Issue Specific Hearing (18/01/2017, see 4.3-4.5 of REP3-016).

6.2.3 The operational Scheme Assessment was undertaken in accordance with the published advice, which includes the following;

- *HA207/07 Design Manual for Roads and Bridges (DMRB) Volume 11, Section 3, Part 1, May 2007;*
- *Local Air Quality Management Technical Guidance LAQM.TG(16) issued by the Department for the Environment, Food and Rural Affairs (Defra);*
- *IAN 170/12v3 Updated air quality advice on the assessment of future NOx and NO2 projections for users of DMRB Volume 11, Section 3, Part 1 'Air Quality, November 2013;*

- *IAN 174/13 Updated advice for evaluating significant local air quality effects for users of DMRB Volume 11, Section 3, Part 1 Air Quality (HA207/07);*
- *IAN 175/13 Updated advice on risk assessment related to compliance with the EU Directive on ambient air quality and on the production of Scheme Air Quality Action Plans for users of DMRB Volume 11, Section 3, Part 1 Air Quality (HA207/07), June 2013; and*
- *IAN 185/15, Updated traffic, air quality and noise advice on the assessment of link speeds and generation of vehicle data into 'speed-bands' for users of DMRB Volume 11, Section 3, Part 1 'Air Quality and Volume 11, Section 3. Part 7 Noise.*

6.2.4 A number of Boroughs including the London Borough of Lewisham, London Borough of Hackney, London Borough of Bexley and London Borough Southwark have raised concerns about the methodology used to undertake the operational air quality assessment, particularly in relation to utilising the DMRB criterion of 1,000 AADT to determine the study area.

6.2.5 The Applicant considers that the Scheme has been assessed in accordance with the most appropriate guidance designed to assess a road scheme. This is the guidance set out in Highways England's Design Manual for Roads and Bridges (DMRB) guidance (HA207/07) and associated Interim Advice Notes (IANs). This guidance is designed to address the impacts of schemes that involve the construction of major new roads that can potentially lead to changes in road traffic flows across the wider network. However, the applicant provided additional air quality modelling of roads that were close to meeting the DMRB change criteria (REP3-032 Appendix 8) in the London Borough of Southwark and the London Borough of Lewisham. The modelling concluded that the impacts of the Scheme were classified as 'imperceptible' in the context of IAN 174/13. In the Applicant's view, this supports the use of the DMRB screening criteria as appropriate and demonstrates why it is not necessary to consider smaller changes in traffic flows. Consideration of smaller changes in traffic flow would not impact on the conclusion of the assessment that the scheme does not lead to a significant impact on air quality.

6.2.6 The Applicant was also asked on several occasions why an air quality neutral assessment had not been undertaken by both the boroughs and in the Examination Authority's first written questions. The response was provided in REP1-151 (response to AQ.2) which outlined why the Applicant has not provided an Air Quality Neutral assessment. The guidance in relation to air quality neutral makes clear that it is not appropriate to apply such an

assessment to a road scheme. This is clear in paragraph 2.9 (page 5) of Air Quality Neutral Planning Support Update: GLA 80371 April 2014 (RE1-151 Appendix B), which states that:

“Major transport infrastructure development, such as that proposed by TfL, is assessed using the Transport Advisory Guidance (TAG) methodology, which estimates changes to NOx and PM emissions, and then applies an economic valuation. It is therefore suggested that it would be inappropriate to apply the air quality neutral policy to these types of development.”

- 6.2.7 The Scheme is a major transport infrastructure development and, as such, a TAG assessment has been carried out for this scheme in accordance with the appropriate TAG advice.
- 6.2.8 A number of Boroughs including the London Borough of Newham (particularly in relation to the Hoola development) raised concerns regarding the Scheme’s impacts on their air quality management areas (AQMA). A response to this was provided in the Applicant’s response to the Borough’s Written Representations and Local Impact Reports, (REP2-035 page 116), and in response to FWQ AQ13 (REP1-151), where it was stated that it is the Applicant’s view that the Scheme would not create the need for the Local Authorities to change the size of any existing AQMA or require the designation of a new AQMA. Further information was provided to the London Borough of Newham regarding Hoola in REP3-031, Appendix 5 which includes additional air quality modelling and projections to the likely opening year of 2023. This document supports the Applicant’s view that there would not be a need for Newham to change the size of the existing AQMA.
- 6.2.9 In addition to AQMA, compliance with the Limit Values was also raised as a concern by the Local Authorities. As stated in the Applicant’s response to the ExA’s Rule 17 request (REP1-093), It should be noted that responsibility for compliance with the EU Limit values is the responsibility of the UK Government and not Local Authorities. Reporting against compliance with EU Limit Values is undertaken by Defra and reported at a zonal/agglomeration level. Zones/agglomerations only comply when everywhere in the zone (subject to exceptions such as locations with no public access or fixed habitation) is below the EU Limit Value. This is the basis of Defra’s reporting, which is designed to determine what the maximum concentration is within the zone and hence determine the date the zone will comply with the Limit Value. The Scheme resides within the Greater London Urban Agglomeration and the assessment undertaken in

accordance with IAN 175/13 has concluded that the scheme will not impact on compliance with the Directive.

- 6.2.10 It is important to note that the air quality assessment has applied conservative assumptions, including the assumptions in respect to future trends in nitrogen dioxide (NO₂) following Interim Advice Note (IAN) 170/12v3 (AS-022, Par 6.3.95 to 6.3.99). In applying this advice, the assessment takes into account the ClientEarth judgement against Defra as presented in the Applicant's Rule 17 response (REP1-093).
- 6.2.11 This conservative assumption was also explained in respect of Euro 6 bus modelling, where, at REP3-028, the Applicant confirmed that even if emissions from Euro 6 diesel vehicles increased in real world terms compared to model results, this would not affect the outcome of the assessment (REP3-028). This analysis demonstrated why the Applicant considered the air quality assessment is worse case. It showed that any updated Defra modelling tools, which uplift only part of the diesel car emissions, would still be unlikely to result in a modelled concentration that is higher than the approach that is advocated in the advice in IAN 170/12v3, used to determine the impact of the Scheme.
- 6.2.12 The air quality assessment for the Scheme concluded that the Scheme improves air quality overall at receptors which are predicted to experience the highest pollutant concentrations (that are predicted to exceed the air quality strategy (AQS) objectives). The overall conclusion in accordance with IAN 174/13 (used to determine compliance with Paragraph 5.12 of the national networks national policy statement (NN NPS)) was that the scheme would not lead to a significant impact on air quality (REP2-041 Para 2.3.41).
- 6.2.13 The assessment therefore demonstrates that, without the Scheme, the majority of receptors that are predicted to reside within areas that are in exceedance of the AQS Objectives, will be subject to higher annual mean NO₂ concentrations.
- 6.2.14 In accordance with IAN 175/13 (used to determine compliance with Paragraph 5.13 of the NN NPS) the scheme was also assessed as not impacting on the UKs ability to comply with the Air Quality Directive (REP2-041 Para 2.3.50).
- 6.2.15 As a result of the scheme there is one large worsening (in the context of IAN 174/13) in air quality at the Hoola development receptor. The impact of the Scheme on this receptor has been considered in the judgement of the overall Scheme impacts. Additional information was provided in relation to

this receptor (REP3-031, Appendix 5), to provide further detail behind the justification of the conclusion related to the scheme impacts. The note demonstrated that even under the conservative assumptions made in the modelling, with the scheme unlikely to open until 2023 there was predicted to be no exceedance of the AQS Objective at the receptor in 2023. This reinforces the Applicant's view that the mitigation provided (in the form of the Euro VI or equivalent buses) is sufficient and additional mitigation for the building as requested by the London Borough of Newham in the form of ventilation is not proportionate and is not required.

- 6.2.16 In addition to the ES, a Health and Equalities Impact Assessment was undertaken (APP-090) which included a quantitative assessment of noise and health. This concluded (in Section 11) that the effect of the Scheme to the health of the population due to changes in terms of air quality is not considered to be significant.
- 6.2.17 In relation to uncertainties in the air quality assessment, the Applicant accepts that there are inherent uncertainties in the traffic and air quality modelling process. To minimise uncertainties, however, the Applicant has followed the current published guidance, verified the air quality model with actual monitored concentrations, and uplifted the modelled concentrations in accordance with IAN 170/12v3 to ensure that future projections of nitrogen dioxide (NO₂) are not optimistic. The Applicant's view in relation to uncertainty was provided in REP3-027 (pages 28-33).
- 6.2.18 An important part of mitigating against future uncertainties has however been the development of the Monitoring and Mitigation Strategy (MMS), REP6-068. The M&MS details how the applicant will ensure that the impacts of the scheme will not lead to a material worsening in air quality. The power to vary the charge and to affect the traffic flows will be a powerful tool should the scheme impacts not be as expected. As part of the MMS, air quality and traffic monitoring will be carried out both pre and post operation, with reports produced by an independent expert in consultation with STIG. This information will be used to determine whether additional mitigation measures are required once the Scheme is operation.
- 6.2.19 Requirement 7 of the dDCO has been included by the Applicant during the examination to ensure monitoring of air quality is carried out in accordance with the Monitoring and Mitigation Strategy and that a scheme of mitigation (approved by the Mayor) must be implemented if an annual review carried out by an independent expert concludes that the Scheme has resulted in a material worsening in air quality.

6.2.20 Requirement 7 of the dDCO has been included by the Applicant during the examination to ensure monitoring of air quality is carried out in accordance with the Monitoring and Mitigation Strategy and that a scheme of mitigation (approved by the Mayor) must be implemented if an annual review carried out by an independent expert concludes that the Scheme has resulted in a material worsening in air quality.

6.3 Noise

6.3.1 Operational noise associated with traffic flow changes resulting from the Scheme have been predicted and assessed with regard to NN NPS and the Noise Policy Statement for England (NPSE) which seek to mitigate and minimise noise impacts from a new development. Chapter 14 of the ES (APP-031) sets out the DMRB Volume 11 Section 3 Part 7 HD213/11 '*Noise and Vibration*' Detailed Assessment (HD213/11) and CRTN Methodology that has been applied, which has not been challenged during the examination.

6.3.2 Consideration has been given to both Short Term and Long Term road traffic noise impacts of the proposed Scheme. The results of these assessments conclude that changes in road traffic flows and composition within the area as a direct result of the Silvertown Tunnel would result in both increases and decreases in noise at identified sensitive receptors within the study area:

- traffic noise impacts of the Scheme in the short term within the ES assessed case would be limited to slight adverse and therefore would not be considered significant.
- in the long term, assessed case changes in road traffic noise would result in a small number of dwellings (6 all within the Hoola Development) experiencing a noise increase which has been classified as a moderate adverse significance of effect purely as a result of the sensitivity of these receptors resulting from the relationship to Significant Observed Adverse Effect Level (SOAEL) noise criteria. However, as these dwellings are located within the Hoola Development and as such are subject to the noise insulation inherent within the design of the building, controlled through London Borough of Newham planning conditions. This insulation has been analysed in the context of the Scheme in the 'Noise Impact upon Hoola Development' Technical Note, included in Appendix E of REP1-166. The technical note demonstrates the insulation at the façade of the building would be sufficient to ensure that internal noise levels

with the Scheme in operation would not exceed the threshold of 'reasonable' identified within BS8223: 2014.

- Accordingly, significant adverse impacts on health and quality of life will be avoided with regard to noise at these receptors.

- 6.3.3 In addition to the ES a Health and Equalities Impact Assessment was undertaken (APP-090) which included a quantitative assessment of noise and health. This concluded (in Section 10) the effect of the Scheme in relation to health of population due to changes in noise levels is not considered to be significant.
- 6.3.4 Through the DCO process a limited number of variations to the assessed case traffic flow data have been considered to account for additional Over Height Vehicles (OHV's). A technical note produced in relation to an additional 400 OHV's was submitted at Deadline 1 in Appendix K of the Applicant's responses to FWQs on Air Quality (REP1-151). The note concluded the addition of the 400 OHV's does not materially change the conclusions of the ES. This was challenged further by the London Borough of Newham at the Environmental ISH hearing on the 18th January 2017 where it was requested 520 OHV's (i.e. the unadjusted number of OHVs) travelling northbound were also assessed (REP3-016). Although the Applicant reaffirmed that 400 OHVs (AADT) were already considered to represent the 'worst case' the results of a sensitivity test were submitted at Deadline 4 (REP4-047). This also concluded that the significance of effects for operational road traffic noise remains as reported in Chapter 14 of the ES (APP-031).
- 6.3.5 A Noise Insulation Regulations (NIR) 1975 (as amended in 1988) assessment was completed and submitted at Deadline 1 in response the ExA's to FWQ's (Appendix F of REP1-166). This demonstrated none of the residential dwellings within 300m of the Scheme are predicted to experience an increase from the scheme roads of 1dB or greater, therefore no dwellings are predicted to qualify for noise insulation under the NIR.
- 6.3.6 The noise assessment has included low noise surfacing and noise barriers around the tunnel portal as noise mitigation measures, as set out in Section 14.5 of Chapter 14 Noise and Vibration of the ES (APP-031) and as secured by Requirement 12 of the dDCO. All possible options in terms of locations for other noise mitigation measures have been investigated as part of the design process but were found to have little effect or deemed not to be cost effective as presented in Appendix C of Comments on Borough Local Impact Reports and Written Representations (RP2-035). Indicative plans of high

friction and low noise surfacing were supplied to the ExA Panel at Deadline 3 (REP3-032, Appendix 10) and Requirement 12 of the dDCO was also amended at Deadline 3 to clarify the relationship between low noise surfacing and high friction surfacing (REP3-019).

- 6.3.7 Regarding the modelling of the operational noise effects and uncertainty, the method of traffic noise modelling which is well established in the UK takes account of a wide range of parameters, and it takes a large change in any one of them to cause a material change in the model results. For example, if all other parameters are unchanged, it takes a 26% increase in traffic flow to cause a 1 decibel increase in L10 18 hour (the smallest change in short time noise level that results in a moderate level of significance at a receptor of very high sensitivity) and a 100% increase in traffic volume to cause a 3 dB change (the smallest change in noise level that results in a moderate level of significance at a receptor of high sensitivity).
- 6.3.8 The Applicant proposes to undertake ongoing monitoring of road traffic and noise to conclude if changes are related to the Silvertown Scheme. Section 2 of the Monitoring and Mitigation Strategy (REP4-046) which was submitted at Deadline 4 in response to comments from the Boroughs outlines the requirement for a 'refreshed assessment' prior to opening of the Scheme, when setting the user charge. The refreshed assessment will not 'replace' the assessment which was used to identify the likely significant effects of the Scheme in the Environmental Statement. Rather, it will enable the Applicant to have the benefit of the most up-to-date data when setting the initial user charges and identifying any implementing any mitigation measures that are necessary before the Scheme opens. Noise modelling would be updated in parallel with transport modelling and any measures identified as required to mitigate residual noise impacts will be submitted for the approval of the local planning authority in accordance with requirement 12 of the DCO. This noise monitoring strategy is fully outlined in Section 3.8 of the MMS and would be undertaken in association with Air Quality, Traffic and Socio-economic monitoring.
- 6.3.9 A 'noise trigger' has been developed in Section 4.5 of the report which, if exceeded will ensure consideration of localised mitigation. The text in Section 4.5 was amended further in a revision to the Monitoring and Mitigation Strategy submitted at Deadline 6 (REP6-068) in response to the London Borough of Newham's comments and additional detail on this point has been included.

Seibert Road

- 6.3.10 Through ongoing consultation with the Royal Borough of Greenwich the Applicant was made aware of concerns from residents of Siebert Road and Westcombe Hill in Greenwich relating to noise levels adjacent to the existing A102. A technical note identifying the options for providing standard noise mitigation measures and potential solutions for each section which could be implemented subject to the results of further survey work was submitted at Deadline 2 (REP2-040).
- 6.3.11 As set out in the Applicant's Written Summary for Air Quality, Noise and other Environmental Issues ISH 180117 (REP3-016) the location of the proposed barrier is outside of the DMRB detailed study area. However, all identified links from the RXHAM traffic model have been considered as defined within the RXHAM traffic model area.
- 6.3.12 The overall results of all considered links showed a neutral significance of effect in the short and long term thus, the noise assessment in the ES does not identify a need for mitigation at Seibert Road as a result of the Scheme.
- 6.3.13 Notwithstanding this, the Applicant has committed to providing an acoustic barrier at Seibert Road to attenuate existing noise from the A102. The barrier is therefore an environmental enhancement, rather than a mitigation measure.
- 6.3.14 Any noise barrier would be subject to feasibility checks (given the constraints of this location), consultation, and obtaining the necessary consents (i.e. separate from the DCO). Its precise length is therefore not yet determined. As the proposed acoustic barrier is located outside of the Order limits, and is not a mitigation for the Scheme itself, it is secured through a legal agreement between the Applicant and RB Greenwich, rather than through the DCO itself.

6.4 Construction impacts

- 6.4.1 Overall construction impacts across all topics assessed within the ES are no worse than slight adverse with the mitigation measures in place as secured through the CoCP. Subsequent plans detailing construction methodology and mitigation strategies are also required to be submitted for approval by statutory bodies further to the CoCP, requirement 5 of the dDCO, the Deemed Marine Licence and Protective Provisions for the EA and PLA.
- 6.4.2 Further to queries raised during the Examination, the CoCP was also amended at Deadlines 4 and 6 to make it explicit that plans produced by the Contractor pursuant to that document and presented for approval by the

statutory bodies must also set out how the construction methodology, if it is different from the ES assumptions, does not give rise to materially new or materially different environmental effects than those reported in the ES.

- 6.4.3 Construction noise was a key focus during the examination. As set out in Chapter 14 of the ES (APP 031), noise associated with the Silvertown Scheme has been considered during the construction of the Scheme.
- 6.4.4 Throughout the construction period mitigation methods described in section 14.5 of the Chapter would be implemented to avoid significant adverse noise impacts. Strict adherence to the Code of Construction Practice (CoCP) (REP6-056) and associated Noise and Vibration Management Plan would ensure that no significant adverse noise impacts would arise during construction. Where appropriate, the Contractor will obtain consents from the relevant local authority under Section 61 of the Control of Pollution Act 1974 (which will include noise and vibration limits where relevant) for the proposed construction works and through this mechanism, construction noise and vibration impacts would be controlled. The measures in the CoCP are secured by Requirement 5 of the dDCO.
- 6.4.5 The CoCP was updated at Deadline 4 to include a 'Construction Noise and Vibration Mitigation Scheme' in Appendix G (REP4-035). This sets out how the noise insulation and temporary rehousing schemes work, and what Claimants should do next if they think that they may be eligible for either Scheme.
- 6.4.6 The CoCP was further amended at Deadline 6 to provide clarification on the envisaged noise mitigation and relevant procedures during construction in response to comments made by the London Borough of Newham. Additional detail was added to Appendix G to provide details on 'claims after the start of construction' in Section 7.
- 6.4.7 The London Borough of Newham raised several questions about baseline monitoring in their Local Impact Report and Written Representation. Appendix A of the document Comments on Borough LIRs and WIRs 'Explanation of Baseline Noise and Vibration Monitoring in Newham' (REP2-036) was provided at Deadline 2. This outlined the approach to the baseline noise monitoring surveys presented in the ES. It specifically presented key aspects relating to the duration of the surveys, and how these have been considered in the ES. Appendix D of the same report also provided additional information on the monitoring locations including location maps and photographs of the monitoring equipment.

- 6.4.8 The discrepancies noted between the short term and long term noise monitoring datasets were generally accounted for by a combination of a) different monitoring positions being used as a result of safe access and security between the long and short term surveys, and b) short term surveys avoiding peak flow times in accordance with the existing guidance (Calculation of Road Traffic Noise (CRTN) short method) and agreements made prior to the surveys.
- 6.4.9 It is noted that, under the terms of the CoCP (submitted at Deadline 6) additional pre-construction baseline surveys will be undertaken in consultation with the local authorities and used to subsequently redefine the construction baseline and to inform the noise and vibration management plan for construction. The provisions of Section 61 of the Control of Pollution Act gives local authorities the power to secure the use of best practicable means to reduce noise, whether or not it has been found to be significant in an ES.
- 6.4.10 In response to questions raised by the ExA concerning the construction plant assessed in the ES in the 'construction on land' and 'noise' sections of the FWQ's focused environmental appraisals of both a Pre Cast Concrete (PCC) Segment Manufacturing Plant (REP3-020) and a Slurry Treatment Plant (REP3-021) were submitted at Deadline 3.
- 6.4.11 These appraisals confirmed that, should the Contractor select the option of manufacturing tunnel segments on the Silvertown worksite site using a PCC Segment Manufacturing Plant (an option set out in the Construction Method Statement (CMS), paragraph 5.1.14 (APP-046) or a Slurry Treatment Plant the environmental effects would fall within the parameters of the assessment reported in the ES (APP-031).
- 6.4.12 In addition, due to various minor changes to the Order Limits and envisaged construction method as a result of negotiations with key land owners, a Request for Proposed Non Material Changes (NMC) was submitted to PINS on 12 January 2017 (NMCs 1, 2, 3 and 5) (AS-047), with an Addendum (NMC6) following on 3 February 2017 (AS-047). This showed the application as changed would remain materially the same project as applied for and the application remains of sufficient standard for examination. The proposed NMCs were officially accepted by the ExA at the Compulsory Acquisition Hearing on the 29th March 2017 and in Procedural Decisions issued by the ExA (PD-010, PD-011 and PD-015) following no significant consultation response on the changes (as reported in REP5-003).

6.5 Other environmental effects

Terrestrial Ecology

- 6.5.1 Biodiversity will be conserved and enhanced through the implementation of mitigation and compensation measures to achieve a net gain upon the implementation of the Scheme. Identification of impacts has been undertaken through desk study and survey of the Order Limits, as set out in Section 9.4 of the Terrestrial Ecology ES Chapter (APP-031).
- 6.5.2 The general setting of the Scheme is industrial in nature. The dominant habitat is typical of brownfield habitat in London, habitats and species found include woodland (which has been planted), dense scrub, species-poor grassland, one area of standing water (a reedbed) and nineteen rare or notable invertebrate species. Habitat on site has the potential support breeding birds including black redstart.
- 6.5.3 The assessment identified potential for temporary habitat loss and disturbance of black redstarts during construction of the Scheme. Slight adverse effects are predicted to the black redstart or habitats during construction of the Scheme, with no long term envisaged effects.
- 6.5.4 Adverse effects identified have been mitigated within the Scheme design, as detailed in Section 9.5 of the Terrestrial Ecology ES chapter (APP-031), the CoCP (REP6-056)) and Appendix H: Outline Environmental Management Plan; and ES Appendix 9.H: Biodiversity Action Plan (BAP) and Mitigation Strategy (MS) (REP4-033) Operational (long-term) direct habitat loss has been avoided through the provision of landscaping within the Order Limits where possible.
- 6.5.5 Design principles for ecologically important habitats have been included within Appendix 9.H: BAP MS (REP4-033). The BAPMS also provides for biodiversity offsetting replacement and an exercise in monetising the habitat using Natural Capital principles has been undertaken. The Natural Capital Value of habitats to be lost permanently has been estimated, allowing a 'worst case scenario' total biodiversity offsetting monetary value of £41,036.00. Compliance with the BAP MS (including providing this offsetting contribution) is secured by Requirement 14 of the DCO (REP6-038).
- 6.5.6 In practical terms, a figure for the offsetting payment has been agreed with Royal Borough of Greenwich and forms part of a legal agreement with them.
- 6.5.7 The Habitats Regulation Assessment presented in ES Appendix 9.G (APP-064) identifies the absence of likely significant effects on European Sites or their qualifying features.

- 6.5.8 In accordance with the National Policy Statement for National Networks (NPS NN), significant harm to biodiversity would be avoided and measures would be in place to ensure that protected species are protected from any potential adverse effects of development through the provisions of the CoCP and the dDCO requirements.
- 6.5.9 There is no objection from Natural England or any of the local boroughs in respect of terrestrial ecological matters.
- 6.5.10 It is agreed in the SoCG with Natural England (REP6-084) that the overall assessment and findings of the likely effects of the Scheme and the conclusions reached within Chapter 9 of the ES and the Habitats Regulations Assessment are robust.

Marine Ecology

- 6.5.11 Chapter 10 of the ES assesses impacts on marine ecology from construction of the temporary jetty and associated works (such as dredging), and the operation of the temporary jetty and Not Always Aground but Safely Afloat (NAABSA) facility during the construction phase of the Scheme.
- 6.5.12 The baseline review identified that there are no designated marine sites that could be affected by the marine works and this area is not currently designated as a marine conservation zone. The species and benthic assemblages surveyed in the area were considered typical of communities recorded in the inner Thames Estuary. No marine species or habitats which are considered nationally scarce or rare were recorded within the survey area.
- 6.5.13 During construction and decommissioning of the marine works the impacts would include water quality through generation of sediment plumes during dredging, underwater noise, and changes in habitat extent and quality. The significance of these effects were concluded to be negligible through all pathways except for underwater noise which was considered to be minor adverse.
- 6.5.14 Piling associated with the construction and demolition of the temporary jetty and any in-river construction activities will occur over a relatively short duration of approximately eight weeks with works taking place during regular working hours as mandated in the CoCP (REP6-056). Soft start procedures will be undertaken for a minimum of 20mins prior to piling which will allow fish and/or marine mammals in the vicinity to move away from the works. The CoCP also controls the time any percussive piling to take place during

November – March inclusive (unless otherwise agreed by MMO, PLA and EA).

- 6.5.15 During operation of the jetty, typical effects experienced by marine ecology receptors would be similar to those experienced due to existing river traffic. These include: the generation of sediment plumes when manoeuvring to berth; underwater noise from marine engines and turbulence from general vessel movement. The significance of effects during operation of the wharf and temporary jetty are concluded to be negligible.
- 6.5.16 During the examination the MMO raised a number of issues (REP1-046) including potential behavioural impacts on fish from impact piling, coastal processes, scour protection, survey data obtained to inform the marine ecology baseline, and the contents of the draft deemed marine licence. The Applicant has since actively engaged with the MMO and provided additional clarifications in relations to the issue raised. Agreement with the MMO on issues relating to marine ecology including baseline, assessment and mitigation measures has been reached before the end of examination and was provided to ExA in the Statement of Common Ground (REP5-006).
- 6.5.17 A technical note was produced on underwater noise clarifications (REP4-061) at DL4 to address comments made by the MMO on behavioural impacts on fish from impact piling.
- 6.5.18 CEFAS and MMO indicated that they were satisfied with the methodology of the impact assessment undertaken and it was considered sufficient to inform the ES. However they have recommended further invertebrate survey/benthic data to be collected pre construction to corroborate the findings in the ES. This requirement has been secured as condition 4 in the Deemed Marine Licence contained in the dDCO submitted at Deadline 4 (REP4-025). The draft deemed marine licence has been revised throughout the examination period in consultation with MMO, NE and Historic England; capturing the requirements of the Scheme known at this stage.
- 6.5.19 The MMO raised issues relating to coastal processes, particularly in relation to the suspended sediment modelling that was undertaken within 6.3 ES Appendix 16B Hydrodynamics Modelling (APP-078) and queried whether monitoring and/or mitigation was required for scour and dredging.
- 6.5.20 The applicant responded to the MMO's concerns in both Comments on Written Representations (REP2-044) and provided MMO with a Hydrodynamic Modelling – Additional Clarifications technical note (also submitted to ExA at Deadline 7 for information).

- 6.5.21 With regards to suspended sediment, the impacts were simulated and calculated to be negligible, as set out in paragraph 16.6.11 of the ES (REP1-109).
- 6.5.22 The ES paragraph 10.6.81 indicates that the preferred method of dredging is to utilise a backhoe excavator, and the contractor will be required to use the best available method to minimise the potential for suspension of sediment. This is outlined in section 15.4 of the Code of Construction Practice (REP6-056).
- 6.5.23 With regards to scour, the model indicates that the predicted scour depth around the jetty piles is 0.46m and this would not make a significant difference either to the structure or to the overall condition of the river. Further submissions were made in relation to scour in a technical note on the assessment of Jetty Pile Scour in the Nearshore (REP3-032).
- 6.5.24 As stated in paragraph 15.6.11 of the ES (REP1-110) 'Taking into account the temporary nature of the new temporary jetty (up to 4 years) and the low level of SSC concentrations and deposition associated with dredging operations in the context of already high concentrations of SSC in the Thames, the magnitude of Scheme impact during construction would be Negligible and the significance of effect on hydrodynamics and sediment transport in the River Thames Neutral.'
- 6.5.25 Based on the results of the modelling undertaken to date, it is not considered that scour and accretion monitoring or suspended sediment monitoring is required because negligible impacts are expected.
- 6.5.26 At detailed design stage when the design of the marine works are developed, any appropriate monitoring/mitigation that the MMO considers is necessary could be attached as a condition to the required method statement approvals under the condition 5 of the Deemed Marine Licence. It is agreed with NE in the SoCG (REP6-084) that the features of the rMCZ have been fully considered within the marine ecology assessment and there is sufficient information within the ES that considers the rMCZ.
- 6.5.27 In conclusion, in accordance with the National Policy Statement for National Networks (NPS NN), as set out above, significant harm to biodiversity would be avoided and measures have been suggested to be in place to ensure that protected species are protected from the adverse effects of development.

6.6 Conclusion

- 6.6.1 As this chapter has described, the existing transport problems at the Blackwall Tunnel lead to adverse effects on the local environment. In the context of continued significant growth, these problems will only get worse in the absence of the Silvertown Tunnel. The Environmental Statement for the scheme predicts beneficial impacts for several aspects discussed above and remarkably few adverse impacts given that the project is located in London, and is of a nationally significant scale.
- 6.6.2 The remarkably limited extent of adverse impacts is in part due to the safeguarded status of the project location, but also due to the careful design of the Scheme in consultation with relevant stakeholders, and the extensive mitigation proposals that are set out in the ES, COCP and the MMS.

7. COMPULSORY ACQUISITION AND LAND USE

7.1 Introduction

7.1.1 The case for compulsory acquisition of land and rights over land, and for the temporary use of land, is set out in the Applicant's Statement of Reasons (APP-015), as updated at Deadline 4 (REP4-029).

7.1.2 The Statement of Reasons explains (in Appendix A) the purpose for which each plot of land, as shown on the Land Plans (APP-006, as updated at Deadline 4, REP4-023), is required to be subject to powers of compulsory acquisition or temporary possession.

7.1.3 The paragraphs which follow:

- explain the Applicant's approach to compulsory acquisition;
- set out the reasons why the Applicant considers there is a compelling case in the public interest for compulsory acquisition powers and powers of temporary possession to be granted in respect of land required for the delivery and operation of the Scheme;
- report on the position reached in negotiations with land owners and affected parties who have submitted representations objecting to the Applicant's proposed use and acquisition of land for the purposes of delivering and operating the Scheme;
- explain why the Applicant considers that although the draft DCO includes special category land in the form of open space, the protections in sections 131 and 132 of the Planning Act 2008 are not engaged such that it will not be necessary for the draft DCO to be subject to Special Parliamentary Procedure; and
- report on the Applicant's position in relation to statutory undertakers in the context of sections 127 and 128 of the Planning Act 2008.

7.2 Approach to compulsory acquisition

7.2.1 The Applicant has been diligent in initiating and progressing negotiations with land owners and occupiers affected by the Scheme ('affected parties') and has endeavoured to acquire land and rights over land (as well as to secure temporary possession of land) by agreement wherever possible.

- 7.2.2 The Applicant has provided the Examining Authority with updates on these negotiations at key points in the DCO application and examination process, i.e.:
- on the submission of the DCO application, in Appendix B to the Statement of Reasons (APP-015);
 - at Deadline 1, in a tabular schedule entitled Compulsory Acquisition Negotiations Status Report (Appendix A) in response to the Examining Authority's First Written Question CA1 (REP1-179);
 - at Deadline 4, in an updated version of the CA1 tabular schedule, in response to the Examining Authority's Second Written Question CA 2.2 (Appendix A) (REP4-050);
 - at Deadline 7, in a further updated version of the tabular schedule, to provide the Examining Authority with the most up to date position possible at the close of the Examination.
- 7.2.3 The detailed and evolving content of the above-mentioned updates demonstrates the genuine and sustained efforts made by the Applicant in seeking to secure agreement with affected parties for the use or acquisition of their land to deliver the Scheme.
- **Non-material changes to the application**
- 7.2.4 The Applicant has sought to achieve a proportionate balance between its need to assemble land for the Scheme and the effect of that need on affected parties. Wherever possible, the Applicant has sought to accommodate the views or concerns of landowners in developing its preliminary ('reference') design for the Scheme. This process is documented in the Applicant's Consultation Report (APP-018), and, more recently, in the Applicant's Request for Proposed Non Material Changes (NMC), which was submitted to PINS on 12 January 2017 (NMCs 1, 2, 3 and 5) (AS-047), with an Addendum (NMC6) following on 3 February 2017 (AS-047).
- 7.2.5 Following further consultation on the NMCs, as reported in the Applicant's 'Summary of Responses to Consultation on Proposed Non-Material Changes to the Scheme' (REP5-003), the Examining Authority made a Procedural Decision (in PD-015) to accept the NMCs into the application.
- 7.2.6 Updated application documents taking into account the amendments arising from the NMCs were submitted at Deadline 4 (at the ExA's request, in SWQ on CA) – see REP4-023 (Land Plans, Revision 1), REP4-024 (Special

Category Land Plan, Revision 2), REP4-025 (Draft DCO, Revision 4, which has been updated again for Deadline 7 (Revision 6)), REP4-029 (Statement of Reasons, Revision 2), REP4-031 (Book of Reference, Revision 2, which has been updated again for Deadline 7 (Revision 3)).

7.2.7 The Applicant's response to SWQ CA 2.5 (in REP4-050) included a list of additional documents which would require consequential amendments to reflect the NMCs, and these additional updated documents (as listed below) were submitted at Deadline 6: REP6-032 (Tunnels Location and Operational Boundaries Plans, Revision 1), REP6-033 (Works Plans, Revision 1), REP6-034 (Rights of Way and Access Plans, Revision 1), REP6-035 (Classification of Roads Plans, Revision 1), REP6-036 (Traffic Regulation Measures Plans, Revision 1) and REP6-042 – REP6-053 (ES Figures, Revision 1).

- **Importance of continuing negotiations**

7.2.8 The Applicant's dialogue with affected parties will continue if development consent is granted and the Scheme is taken forward to the detailed design stage, during which the Applicant will explore any scope to further reduce the extent of necessary land take.

7.2.9 In accordance with policy guidance, the Applicant would only exercise the powers of compulsory acquisition (and temporary possession) sought in the draft DCO where this was necessary as a tool of 'last resort' in the event that negotiations failed and agreement was unachievable or was otherwise frustrated.

7.2.10 Clearly, in the case of a long, linear scheme such as the Silvertown Tunnel, it is prudent for the Applicant to seek powers of compulsory acquisition across the length of the Scheme, in order to ensure its ultimate deliverability.

7.2.11 The Applicant appreciates that negotiating with affected parties for the acquisition of the land and rights over land required for the Scheme, and the process of balancing the needs of the Scheme with the needs of affected parties, are part of the process of establishing a compelling case in the public interest, which is fundamental to the granting of powers of compulsory acquisition in a DCO.

7.3 Compelling case in the public interest

7.3.1 As set out below in this paragraph (7.3), the Applicant considers that all of the relevant statutory and policy tests are met, such that there is a compelling case in the public interest for powers of compulsory acquisition

(and temporary possession) to be granted on the basis sought in the draft DCO.

- **Statutory conditions – section 122 of Planning Act 2008**

7.3.2 The conditions in section 122(2)(a) and (b) of the Planning Act 2008 are satisfied – please refer to the Applicant’s Written Summary of Submissions made at the Compulsory Acquisition Hearing held on 8 December 2017, under agenda item 4(a) at pages 13-14 of REP2-038.

- **Public benefits outweighing private loss**

7.3.3 The condition in section 122(3) is met, in that there is a compelling case in the public interest for the land to be acquired compulsorily – please refer to the Applicant’s Written Summary of Submissions made at the Compulsory Acquisition Hearing held on 8 December 2017, under agenda item 4(e) at pages 20-21 of REP2-038.

7.3.4 The Applicant has considered the private loss that would be suffered by parties whose interests in land are affected by the Scheme – please refer to the Applicant’s Written Summary of Submissions made at the Compulsory Acquisition Hearing held on 8 December 2017, under agenda item 4(f) at pages 21-22 of REP2-038.

7.3.5 The Applicant considers that such private losses may be fairly and adequately compensated through the payment of statutory compensation under the Compensation Code – again, please refer to the Applicant’s submissions under agenda item 4(f) at pages 21-22 of REP2-038.

7.3.6 It is in the public interest for the Scheme to be delivered because it would give rise to the public benefits detailed in the Applicant’s Case for the Scheme (APP-093) and included among the reasons for which the Secretary of State granted a Section 35 Direction in 2012 (as explained in the Statement of Reasons (REP4-029)) and identified in the Applicant’s Written Summary of Submissions made at the Compulsory Acquisition Hearing held on 8 December 2017, under agenda item 4(e) at pages 21-22 of REP2-038.

7.3.7 Having weighed the private losses against the public benefits, the Applicant considers that the latter outweigh the former – please refer to the Applicant’s Written Summary of Submissions made at the Compulsory Acquisition Hearing held on 8 December 2017, under agenda items 4(f) on page 21, 11(a) on page 40-41 and 11(b) on pages 44-45.

- **Human Rights Act 1998 and European Convention on Human Rights**

7.3.8 The Applicant has had due regard to Articles 6 and 8 and Article 1 of the First Protocol of the European Convention on Human Rights ('ECHR'), which are imported into UK domestic law by the Human Rights Act 1998 – please refer to the Applicant's Written Summary of Submissions made at the Compulsory Acquisition Hearing held on 8 December 2017, under agenda item 2(a) on page 3 and under agenda item 11 at pages 39-45 of REP2-038.

7.3.9 Having had regard to the interference with Convention Rights to which the Scheme would give rise, the Applicant considers that the public benefits which the Scheme would bring would outweigh the private loss which would arise from the interference with private rights, and that such interference would be:

- **legitimate** – in so far as the scheme is being brought forward under the Planning Act 2008, pursuant to the Applicant's powers and duties as a public authority (see also paragraphs 6.6.14, 6.6.16 and 9.2 of the Statement of Reasons (REP4-029));
- **necessary** – to bring about the benefits and achieve the objectives set out in the Case for the Scheme (APP-093); and
- **proportionate** – in that a fair balance would be struck between the public benefits and the interference with private rights (see page 16 of REP2-038 under agenda item 4(b) and paragraphs 6.3.3 and 6.4.1 of the Statement of Reasons (REP4-029)).

- **Alternatives to compulsory acquisition**

7.3.10 Paragraph 8 of the DCLG Guidance, 'Planning Act 2008: procedures for the compulsory acquisition of land' published in September 2013 ('the 2013 CA Guidance') requires the Applicant to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The Applicant is also required to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate – as to which, please see paragraph 7.3.9 above.

7.3.11 In relation to the first limb of paragraph 8 (the requirement for all reasonable alternatives to have been explored), the Applicant has considered alternatives on a number of different levels, as is explained in the Statement of Reasons (REP4-029) and the Case for the Scheme (APP-093), as well as at page 16 (under agenda item 4(b) of the Applicant's Written Summary of Oral Submissions made at the Compulsory Acquisition Hearing held on 8

December 2016 (REP2-038); and in particular paragraphs 3.2.4 and 6.5.15 of the Statement of Reasons (REP4-029); the Applicant's Written Summary of Submissions made at the Compulsory Acquisition Hearing held on 8 December 2017, under agenda item 4(b) on page 16 and under agenda item 4(c) on pages 17-18 of REP2-038; and articles 19, 22 and 29 of the draft DCO (version 6, submitted at Deadline 7).

- **Intended use of the land - Purpose for which compulsory acquisition is sought**

7.3.12 The policy requirement in paragraph 9 of the 2013 CA Guidance for the Applicant to have "*a clear idea of the how it intends to use the land*" which it proposes to acquire is satisfied: the Scheme proposals are clearly set out in the DCO application and, as is explained in Appendix A to the Statement of Reasons, the Applicant has a clear idea as to the purpose for which each plot of land is required – please also refer to the Applicant's Written Summary of Submissions made at the Compulsory Acquisition Hearing held on 8 December 2017, under agenda item 4(b) on page 14 of REP2-038.

- **Adequate funds to enable acquisition**

7.3.13 Paragraph 9 of the 2013 CA Guidance also requires the Applicant to demonstrate that there is "*a reasonable prospect of the requisite funds for the acquisition becoming available*". As is demonstrated by the information set out in the Funding Statement (APP-016) and in the submissions under agenda item 5 in the Applicant's Written Summary of Oral Submissions made at the Compulsory Acquisition Hearing held on 8 December 2016 (REP2-038), there is a reasonable prospect that the requisite funds will be available when required, in order to facilitate the compulsory acquisition of the land and rights required for the Scheme.

7.3.14 As noted in paragraph 9 of the 2013 CA Guidance, the Applicant's ability to demonstrate that there is a reasonable prospect of the requisite funds becoming available helps to show conclusively that the compulsory acquisition of the land meets the two conditions in section 122 of the Planning Act 2008.

- **Consideration of Convention Rights**

7.3.15 Paragraph 10 of the 2013 CA Guidance requires the Applicant to have regard to Article 1 of the First Protocol of the European Convention on Human Rights. The Applicant has had regard to Article 1 of the First Protocol, as explained above in paragraphs 7.4.3 -7.4.4.

- **No more land than is reasonably required**

7.3.16 In the context of the tests set out in section 122 of the Planning Act 2008, paragraph 11 of the 2013 CA Guidance advises that the Secretary of State will need to be satisfied that the land to be acquired is not more than is reasonably required for the purposes of the development.

7.3.17 As noted above (in paragraph 7.3.4), the Applicant confirms that this requirement is currently met in relation to the amount of land that is proposed to be acquired based on the preliminary design of the Scheme. However, the Applicant has sought to ensure that this requirement can continue to be met as the detailed design for the Scheme is developed (if development consent is granted), by incorporating limits of deviation in the draft DCO in relation to all authorised works (to facilitate the detailed design process), and by drafting the land use powers in terms which would enable compulsory acquisition to follow a period of temporary possession (during which construction could be carried out), such that, ultimately, only the land which was required for the as-built version of the Scheme would actually need to be acquired – please refer to page 3 of the Applicant’s submissions in REP2-038 and also to page 14 of Appendix B to the Applicant’s response to the ExA’s Second Written Question CA 2.4 (REP4-050).

- **Support in relevant national policy statement**

7.3.18 Paragraph 19 of the 2013 CA Guidance requires the Applicant to demonstrate that its application for development consent is “firmly rooted” in any relevant national policy statement.

7.3.19 The Applicant has demonstrated, in its Case for the Scheme (APP-093) and in Appendix 1.A: National Policy Statement for National Networks Compliance (APP-044) to the Environmental Statement that the Scheme is firmly rooted in, and is being promoted in accordance with, relevant national policy.

- **No impediments to implementation**

7.3.20 Paragraph 19 of the 2013 CA Guidance also requires the Applicant to demonstrate that any potential risks or impediments to implementation of the Scheme have been properly managed; and that any other physical and legal matters pertaining to the application, including programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents has been addressed.

7.3.21 The Applicant has set out in the Statement of Reasons (REP4-029), in the Consent and Agreements Position Statement (REP3-007), in the Statement in respect of Statutory Nuisance (APP-088), and in the Code of Construction Practice (REP4-036), how any potential risks or impediments to implementation will be properly managed, and how any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents, is proposed to be addressed.

- **Negotiations to acquire by agreement**

7.3.22 Paragraph 25 of the 2013 CA Guidance requires the Applicant to “*seek to acquire land by agreement wherever practicable*”. The Applicant is aware of the general rule that authority to acquire land compulsorily should only be sought as part of an order granting development consent in a scenario of last resort, if attempts to acquire by agreement fail. To that end, the Applicant commenced its negotiations with affected parties at an early stage (in many cases some two years before the submission of the DCO application) and, as noted above in paragraph 7.2, has endeavoured to progress those negotiations throughout the DCO application and examination process, with the aim of reaching an agreed position in good time, and prior to the close of the Examination.

7.3.23 Notwithstanding the Applicant’s best efforts (as referenced above), it has not been practicable or possible to acquire all of the land required for the Scheme by negotiation.

7.3.24 However, the Applicant is also aware that the 2013 CA Guidance advocates that “*where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land*” and that “*where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.*”

7.3.25 It is in this context that the Applicant seeks powers of compulsory acquisition in its application for development consent for the Scheme.

- **2015 CA Guidance**

7.3.26 The Applicant has also had regard to the ‘Guidance on compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion’ published by DCLG in October 2015 (‘the 2015 CPO Guidance’).

7.3.27 The key requirements for justifying compulsory purchase, as set out in Stage 2 of the 2015 CPO Guidance, replicate the requirements for justifying compulsory acquisition as set out in the 2013 CA Guidance. As the requirements set out in the 2013 CA Guidance are covered in detail above, the Applicant has not repeated them here with reference to the 2015 CPO Guidance. However, the Applicant confirms that, in the context of its DCO application and the Scheme the subject of that application, the requirements of the 2015 CPO Guidance are met.

- **Overall conclusion on compelling case**

7.3.28 For all of the reasons set out above, the Applicant concludes that all of the relevant statutory conditions and related policy/guidance requirements are met, and that, in the context of the application for development consent for the Scheme, there is, therefore, a compelling case in the public interest for compulsory acquisition of the land and rights over land included in the draft DCO, in the event that, notwithstanding the Applicant's best efforts, negotiations to acquire that land and rights over land cannot be adequately concluded in the context of the budgetary and programming constraints within which the Scheme is required to be delivered.

7.4 Land north of the river

7.4.1 On the north side of the river, the Applicant has reached agreement with the following land owners and affected parties who previously submitted representations objecting to the Scheme in relation to matters of land acquisition and land use:

- **ASD Limited** (trading as Kloekner Metals UK): negotiations (including matters regarding site access) are at an advanced stage and, as such, an agreement between ASD and the Applicant is expected to be completed by the close of the Examination. When the Agreement is completed, ASD will withdraw its objections to the Scheme and will inform the Secretary of State that it has done so. The following position statement has been agreed between the Applicant and ASD:

- *“Transport for London and ASD Limited’s discussions have been on-going since the hearing in respect of reaching an agreement in relation to mitigating the impacts of the temporary possession of ASD’s land resulting from the Scheme.*

- *“The agreement is not yet complete due to completion technicalities; however the parties are working on the basis that an agreement should be in place by the end of the Examination.*
- *“Until an Agreement is reached, ASD’s objections to the Scheme remain. However, as stated above, both sides consider that matters between the parties can be resolved such that ASD’s objections will be able to be withdrawn by the end of the Examination.”*

- **Thames Water Utilities Limited** (“TWUL”): the position between TWUL and the Applicant is explained below at paragraph 7.8.6 and is set out more particularly in the position statement submitted jointly by the parties at Deadline 7.
- **Waterfront Studios Limited and Newable Property Developments Limited**: negotiations are at an advanced stage and, as such, an agreement between these parties and the Applicant is expected to be completed by or shortly following the close of the Examination. When the Agreement is completed, Waterfront Studios Limited and Newable Property Developments Limited will withdraw their objections to the Scheme and will inform the Secretary of State that they have done so.

7.4.2 As at Deadline 7, the Applicant’s continued efforts to secure the use or acquisition of land for the Scheme by negotiated agreement, have culminated in an ‘agreement in principle’ with **Silvertown Homes Limited (“SHL”)** in respect of two outstanding issues: spoil re-use at the Thameside West and Carlsberg-Tetley sites, and early release of land used by the Applicant under powers of temporary possession.

7.4.3 The Applicant and SHL have jointly agreed, and submitted to the ExA at Deadline 7, a position statement which explains that the parties have now negotiated a resolution in principle to the previously outstanding issues of spoil re-use and early land release and aim to reach formal agreement on these matters shortly, following which Silvertown Homes Limited will write to the Secretary of State to withdraw its remaining outstanding representations.

7.4.4 In the context of this position statement, the Applicant is continuing to negotiate with SHL with the aim of settling the details of these remaining outstanding issues by agreement.

7.4.5 The background to the current ‘agreement in principle’ is set out below:

- The Applicant has dedicated significant time and resource to lengthy and constructive negotiations with SHL (and with its predecessor corporate bodies, Quintain No.8 Limited and Keystone). These negotiations date back to mid-2014 and were instrumental in shaping the design of the Scheme which is the subject of the Applicant's DCO application.
- However, as is explained in the Applicant's detailed Deadline 6 submission (REP6-077), SHL has recently and unilaterally changed the proposed phasing of its development aspirations for land on the north side of the river, known as Thameside West and the Carlsberg-Tetley site, which SHL (in a joint venture partnership with GLA Land and Property Limited) aspires to bring forward for residential development pursuant to a Thameside West Masterplan.
- It is in this context that SHL has, at a very late stage in the Examination of the Scheme, raised two new issues (as noted above), which despite diligent and continued negotiation on the part of the Applicant, currently remain outstanding.
- SHL's position is set out in its Deadline 5 submission REP5-032, the Applicant's response to which is set out in its Deadline 6 submission REP6-077.
- At Deadline 6, building on representations made orally in the Compulsory Acquisition Hearing held on 29 March 2017, SHL submitted some suggested drafting for requirements to be added to the DCO to oblige the Applicant to deal with the two outstanding issues on SHL's terms, which, as the Applicant has explained in REP6-077, are neither practicable nor proportionate in the context of the Applicant's Scheme, given the relative position and status of the Scheme and SHL's proposals in the planning process.
- The Applicant's response to SHL's proposed requirements in REP6-003 is submitted to the Examining Authority at Deadline 7 (in a submission entitled 'Comments on Deadline 6 Responses' (Document Reference: 8.123)). In this submission the Applicant explains why such requirements would be incompatible with the standards set by the National Policy Statement for National Networks, which provides at paragraph 4.9 (applying the 'six tests' set out in paragraph 206 of the National Planning Policy Framework) that "*The Examining Authority should only recommend, and the Secretary of State should only*

impose, requirements in relation to a development consent, that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects.”

7.4.6 Despite currently continuing to seek a solution through sustained negotiations, the Applicant considers that there is a compelling need for the powers of compulsory acquisition and temporary possession sought in the DCO application in respect of land owned by SHL (and GLA Land and Property Limited) to be granted by the Secretary of State. The grant of such powers is necessary to ensure the deliverability of the Scheme in the event that the parties' positions on the issues outlined above prove irreconcilable.

- **Wharf tenants on short term leases**

7.4.7 Land on the north side of the river is currently occupied by a number of tenants on short term leases (e.g. Euromix, Keltbray, General Marine, Regional Waste Recycling, Old Basket Company, Skanska and Skanska & Stanmore Quality Surfacing).

7.4.8 These tenants entered into short term leases on commercial terms which reflected the fact that the land was safeguarded for the Silvertown Tunnel Scheme and would therefore be required for the purposes of that Scheme, such that the tenants would necessarily be displaced when the Scheme was brought forward.

7.4.9 The Applicant's position in relation to wharf usage (including the safeguarded part of Thames Wharf) and the wharf tenants' prospects of relocation is set out in the Applicant's Deadline 6 submission entitled Post Hearing Submission Document (Compulsory Acquisition)', on pages 14-16, under Compulsory Acquisition Hearing agenda item 5, which cross-refers to item 14.1 of the Issue Specific Hearing / Environmental Agenda (REP6-074).

7.5 Land within the river

7.5.1 The Applicant has, throughout the Examination, engaged in constructive negotiations with the Port of London Authority ("the PLA").

7.5.2 The Applicant has had regard to the concerns expressed by the PLA during the Examination and, as is explained in paragraph 8 below, has amended the draft DCO to accommodate and assuage these concerns.

7.5.3 On the matter of the proper basis for the calculation of compensation, the PLA and the Applicant have agreed to differ; the parties' respective positions on the point are set out in the Applicant's Deadline 6 submission entitled 'Post Hearing Submission Document (Compulsory Acquisition)', on pages 13-14, under Compulsory Acquisition Hearing agenda item 5, which cross-refers to item 14.2 of the Issue Specific Hearing / Environmental Agenda (REP6-074).

7.5.4 Accordingly, there can be no basis whatsoever for the PLA's claim to receive a percentage of user charging revenue following the compulsory acquisition of its land required for the Scheme. The PLA will receive compensation for that acquisition in accordance with the established statutory compensation code and that is the sum total of its entitlement for the compulsory acquisition.

7.5.5 The PLA is in no different position to any other landowner whose land is acquired compulsorily for the Scheme.

7.6 Land south of the river

7.6.1 On the south side of the river, the Applicant has reached agreement with the following land owners and affected parties who previously submitted representations objecting to the Scheme in relation to matters of land acquisition and land use:

- **Ansco Arena Limited, The Waterfront Limited Partnership and Trinity (D) Limited** in respect of parking and highway matters affecting the 02 Arena; these parties' objections were withdrawn on 20 March 2017 (REP5-016, REP5-017 and REP5-018 respectively). (In late Deadline 6 submissions, Ansko Arena Limited and The Waterfront Limited Partnership maintain their objections to user charging (REP6-087 and REP6-088 respectively). The Applicant has responded to these objections in its Deadline 7 submission 'Comments on Deadline 6 Responses' (Document Reference: 8.123).
- **Birch Sites Limited and Southern Gas Networks**, whose objections were withdrawn on 31 March 2017 (REP6-001 and REP6-002 respectively).
- **Brenntag Inorganic Chemicals Limited/Brenntag UK Limited**, who today (at Deadline 7) withdrew its objection (by letter to PINS dated 10

April 2017), following the completion of an agreement with the Applicant.

- **Knight Dragon Development Limited** in relation to land proposed to be redeveloped under the Greenwich Peninsula Masterplan; Knight Dragon's objections in connection with parking and highways matters relating to the 02 Arena were withdrawn on 19 March 2017 (REP5-024).
- **Lidoka Estates Limited** – with regard to all matters (as noted in agreed and signed Heads of Terms) save for the compulsory acquisition of land in plot 01-058 for the purposes of providing a replacement fire escape route for Studio 338 (see below).
- **Morden College** owns land which is leased to and occupied by Brenntag and U+I. Whilst the Applicant has negotiated agreements with Brenntag and U+I, it has been working with Morden College to agree a Statement of Common Ground which (whilst it has yet to be signed) the parties have agreed to submit to the Examining Authority at Deadline 7.
- **Mustafa Osman Tary and Raduga Limited** in respect of Studio 338, where the Applicant proposes to use powers of compulsory acquisition to provide a replacement fire escape route in the event that the club is operational and the Scheme precludes use of Studio 338's original fire escape route onto frontage alongside the southbound carriageway of the A102 Blackwall Tunnel Southern Approach. Mr Tary's position is set out in REP1-030 and REP2-002. The Applicant's position is set out in REP4-050 and REP6-074.
- **U and I Group plc** raised concerns about public realm in the vicinity of Tunnel Avenue and the replacement Boord Street foot and cycle bridge. The Applicant's understanding of the position is as set out in the Applicant's Deadline 6 submission entitled Post Hearing Submission Document (Compulsory Acquisition)' (on pages 7-8, under Compulsory Acquisition Hearing agenda item 4 (REP6-074).

7.6.2 Notwithstanding the Applicant's best efforts to secure the use or acquisition of land for the Scheme by negotiated agreement, it has not been possible to reach agreement with the following parties on the matters noted below, which currently remain outstanding:

- **Lidoka Estates Limited** – in respect of land in Plot 01-058 which is proposed to be subject to powers of compulsory acquisition which would be necessary to enable the Applicant to provide a replacement fire escape route for Studio 338 in the event that Studio 338 is operational and the Scheme precludes use of Studio 338's original fire escape route onto frontage alongside the southbound carriageway of the A102 Blackwall Tunnel Southern Approach.
- Lidoka objects to the proposed compulsory acquisition of Plot 01-058 for this purpose.
- Lidoka's position is set out in the submissions made in its Relevant Representation (RR-037) and at Deadline 4 (REP4-065). The Applicant's understanding of Lidoka's position is set out in the Applicant's Deadline 6 submission entitled Post Hearing Submission Document (Compulsory Acquisition)', on pages 9-10, under Compulsory Acquisition Hearing agenda item 4 (REP6-074) and, more particularly, in the Applicant's Deadline 4 submission REP4-050, in the response to SWQ CA 2.4.

7.7 Special category land

- 7.7.1 The Order limits include special category land in the form of open space and Metropolitan Open Land. The relevant plots and the reasons for their status as special category / open space land are identified in paragraphs 11.1.2 and 11.1.3 of the Statement of Reasons as plots 03-021, 03-029, 03-037, 03-037b and 03-037c, as identified on the Land Plans (REP4-023) and the Special Category Land Plan (REP4-024).
- 7.7.2 Sections 131 and 132 of the Planning Act 2008 provide a degree of protection from compulsory acquisition for land which is open space.
- 7.7.3 In respect of plots 03-029 and 03-037b the Applicant seeks powers to acquire compulsorily:
- land, being subsoil (at depth) for the bored section of the tunnel; and
 - above such subsoil, new rights over the remaining subsoil up to and including the surface of the land, for the purpose of imposing restrictive covenants for the protection of the tunnel.

- 7.7.4 In respect of the subsoil which is proposed to be acquired, the Applicant considers that protection under section 131 is not engaged.
- 7.7.5 Where restrictive covenants are proposed to be imposed, the Applicant considers that the exception in section 132(3) applies. The reasons for the application of this exception are set out in row 4 of Table 1 of the Applicant's response to the Examining Authority's First Written Question CA3 (REP1-179).
- 7.7.6 In respect of plots 03-021, 03-037 and 03-037c the Applicant seeks powers to acquire new rights over the subsoil (lying beneath the surface of the land but above the subsoil required for the bored tunnel) and over the surface of the land, for the purposes of imposing restrictive covenants for the protection of the tunnel. Where restrictive covenants are proposed to be imposed over these plots, the Applicant considers that the exception in section 132(3) applies. The reasons for the application of this exception are set out in row 1 of Table 1 of the Applicant's response to the Examining Authority's First Written Question CA 3.1 (REP1-179).
- 7.7.7 In consequence of the above, the Applicant considers that there is sufficient reason for the Secretary of State to be satisfied that it will not be necessary for the draft DCO to be subject to Special Parliamentary Procedure and that the DCO may lawfully be made in a form which authorises the compulsory acquisition of land, and rights over land, on the basis identified above.

7.8 Statutory undertakers

- 7.8.1 The Statement of Reasons (at Appendix D, references as above) identifies land that is owned by statutory undertakers and other similar bodies which have, or may have, a right to keep for the purposes of their undertaking and which is proposed to be acquired by the Applicant for the purposes of the Scheme.
- 7.8.2 Section 127 of the Planning Act 2008 applies to land acquired by statutory undertakers for the purposes of their undertaking, and places restrictions on the compulsory acquisition of such land where a representation is made by a statutory undertaker and not withdrawn.
- 7.8.3 Section 127(2) provides that a DCO may include provisions authorising the compulsory acquisition of statutory undertakers' land if the Secretary of State is satisfied that such land can be purchased and not replaced, or purchased and replaced by other land, without serious detriment to the carrying on of the undertaking (section 127(3)). Parallel protections for statutory

undertakers' land apply where rights over such land are proposed to be acquired compulsorily (sections 127(5) and 127(6)).

7.8.4 Table 8-1 in paragraph 8.4 of the Statement of Reasons identifies the plots of land owned by statutory undertakers which are proposed to be acquired in connection with the Scheme. Those statutory undertakers are: Southern Gas Networks plc, Birch Sites Limited and London Power Networks plc (a wholly owned subsidiary of UK Power Networks).

7.8.5 Table 8-2 in paragraph 8.5 of the Statement of Reasons identifies the plots of land owned by statutory undertakers over which rights are proposed to be acquired in connection with the Scheme. Those statutory undertakers are: Southern Gas Networks plc, Birch Sites Limited and Thames Water Utilities Limited.

7.8.6 The Applicant has reached an agreed position with all 4 of the above mentioned statutory undertakers. Specifically:

- **Southern Gas Networks plc** ('SGN') has reached agreement with the Applicant; an agreement was completed on 31 March 2017 and on that date SGN withdrew its representations/objections to the Scheme.
- **Birch Sites Limited** has reached agreement with the Applicant; an agreement was completed on 31 March 2017 and on that date Birch Sites Limited withdrew its representations/objections to the Scheme.
- **London Power Networks / UK Power Networks plc** has confirmed it is content with the form of protective provisions contained in Part 1 of Schedule 13 to the draft DCO.
- **Thames Water Utilities Limited** is currently in the process of concluding advanced discussions on outstanding matters with the Applicant – the principles and terms of the agreement are largely agreed, although have not formally been secured (proposed to be done outside of the dDCO). The parties are confident that agreement will be reached shortly after the close of the examination, at which time Thames Water Utilities Limited will be able to inform the Secretary of State that its outstanding representations are withdrawn.

7.8.7 In light of the above, the Applicant considers that by the time the Secretary of State comes to make his decision on whether or not to grant development consent for the Scheme, there will be a sound basis on which the Secretary of State may be satisfied that the tests set out in section 127 are met and

that, accordingly, powers of compulsory acquisition may be included in the DCO, if made, in respect of the land in which the above mentioned statutory undertakers have an interest.

- 7.8.8 Section 138 of the Planning Act 2008 applies where a DCO authorises the acquisition of land (compulsorily or by agreement) and there subsists over that land a relevant right, or there is relevant apparatus on, under or over that land. For the purposes of section 138, a 'relevant right' or 'relevant apparatus' means rights or apparatus which are relevant to the carrying on of a statutory undertaker's undertaking, or relevant to a telecommunications code operator for the purposes of its electronic communications code network.
- 7.8.9 A DCO may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates.
- 7.8.10 The Statement of Reasons identifies (at paragraphs 8.3.5 – 8.3.25 and Appendix D) the statutory undertakers whose relevant rights or apparatus would be affected by the Scheme as a result of the Applicant needing to divert or realign it, in order to accommodate the delivery and operation of the Scheme. The Scheme may also affect existing minor private utility supplies or services, such as telecommunications cables which it is anticipated may need to be diverted within the highway boundary.
- 7.8.11 Utility diversion works are proposed to be carried out as part of the authorised works identified in Schedule 1 to the draft DCO. All of these diversion works are necessary for the purpose of carrying out the development to which the DCO relates.
- 7.8.12 Further to the above, the Applicant considers that should any of the utility diversion works come within the ambit of section 138 in that they necessarily involve the extinguishment of the relevant right, or the removal of the relevant apparatus, this will be for the purpose of carrying out the development to which the DCO relates.
- 7.8.13 As such, the Applicant considers that there is a sound basis on which the Secretary of State may be satisfied that the tests set out in section 138 are met and that the DCO may be made in a form which authorises interference by the Applicant with the rights and apparatus of statutory undertakers in connection with the delivery of the Scheme.

7.9 Need for powers of compulsory acquisition and temporary possession to ensure deliverability of the Scheme

7.9.1 As is explained above, the Applicant has engaged in constructive negotiations with land owners and occupiers and other affected parties and has been successful in securing agreements with a significant number of those parties. However, to ensure the deliverability of the Scheme, the Applicant continues to seek powers of compulsory acquisition and temporary possession on the basis and to the extent set out in its application for development consent. If such powers were granted by the Secretary of State, the Applicant would exercise them only where necessary and as a tool of 'last resort' in the absence of agreement.

7.10 Safety

7.10.1 The Scheme is situated in proximity to two major accident hazard sites; the East Greenwich Gas Holder site (EGGS) and Brenntag Inorganic Chemicals Ltd (Brenntag). This has resulted in the Health and Safety Executive (HSE) advising against the Scheme on the basis of the approach set out in the HSE's Land Use Planning Methodology (REP1-080).

7.10.2 The Applicant has worked constructively with the HSE and the parties submitted Statements of Common Ground at Deadline 1 (REP1-141) and Deadline 3 (REP3-013). Both parties acknowledge there are circumstances which could lead to the existing hazardous substance consents (HSC) for these sites being modified or revoked so as to alter the HSE's advice. In particular, there is a pending HSC application for the Brenntag site which would reduce the extent of the consultation zone, and there are proposals to redevelop the EGGS site which was de-notified from the COMAH Regulations in 2015.

7.10.3 As these matters remain unresolved at the end of the examination, the Applicant's position is clearly set out in its response to SWQ HSS2.1 (REP4-059) section 4 of the 'Update Note' submitted at Deadline 5 (REP5-004) and in the Written Summary of the hearing held on 28 March 2017 (REP6-073, section 8.1 and 8.2). The Applicant's view is that the HSE's advice is based on an unduly restrictive methodology which does not accurately reflect the actual use of the EGGS and Brenntag sites.

7.10.4 The Applicant has submitted evidence as to the operational status of the EGGS site (REP4-059) and to demonstrate that the Scheme would not increase the number of people exposed to hazards associated with the Brenntag site (REP6-079).

- 7.10.5 For that reason, the Applicant considers the Secretary of State would be justified in this instance in granting consent against the HSE's advice (see paragraphs 4.1.4 to 4.1.8 of REP5-004).
- 7.10.6 The Applicant does not consider that a Grampian-style requirement is necessary. However, in the event that the Secretary of State is minded to impose such a requirement, the Applicant's preferred drafting is included in Schedule 2 to the dDCO submitted at Deadline 7. The wording of this requirement has not been agreed with the HSE.
- 7.10.7 The 'second-limb' of the Applicant's preferred drafting is essential and provides an appropriate mechanism whereby the Secretary of State can make an informed decision as to whether or not the Scheme may open in the event that the current consents at the EGGS and BICL sites remain in place (see the Applicant's response to SWQ HSS2.1 (REP4-059) and paragraph 4.1.11 of REP5-004)). It would be wholly unacceptable for the operation of a nationally significant infrastructure project to be contingent on the revocation or modification of the current consents at the BICL and EGGS sites as the HSE has suggested.

8. WORDING OF THE DCO

8.1 Introduction

The dDCO submitted alongside the application has been revised six times during the examination (REP1-095, REP2-021, REP3-003, REP4-025, REP6-038 and the version of the dDCO submitted alongside this document at Deadline 7). An ‘interim’ revised version of the dDCO was also submitted ahead of the March hearings at the ExA’s request (AS-049). Predominantly, this has been due to:

- points raised by the ExA in its written questions;
- issues arising from the hearings; and
- changes arising from discussions with interested parties.

The Applicant has also itself identified changes required to the dDCO during the examination – for example, to align with its existing operational regime.

Alongside each revision of the dDCO submitted into the examination, the Applicant submitted an explanatory document, summarising the reasoning for the changes proposed (REP1-181, REP2-033, REP3-019, REP4-043, REP6-071 and the version of the document submitted alongside this document at Deadline 7).

The Applicant considers the dDCO is now in a form that is acceptable to the vast majority of interested parties, although there remain outstanding disagreement on a small number of provisions .

This section summarises the most significant amendments which have been made to the dDCO during the examination and explains the context and justification for these.

Part 5 (User charging) of the dDCO is not commented on here, given the commentary on user charging more generally above.

The Applicant’s post-DCO ISH summaries submitted into the examination should be read alongside this section (REP3-017 and REP6-075).

Please note that, for ease of reference, references to an article number in this position statement should be read in the context of the article numbering employed in revision 5 of the dDCO submitted at Deadline 6 (REP6-038).

8.2 Article 5 (Limits of deviation)

During the examination, the ExA and certain interested parties expressed concerns about the degree of flexibility for the lateral and vertical limits of deviation provided by the original drafting of article 5.

The Port of London Authority (“the PLA”) expressed concerns as to the extent of the 3 metre upwards vertical limit of deviation that could be exercised in respect of the tunnelling works under the bed of the river Thames. Having listened to these concerns, which focussed on maintaining a sufficient depth of the river bed in the navigable channel, the Applicant amended the article 5 at Deadline 1 so as to limit the upwards extent of the limit of deviation under the river Thames to 1.5 metres, but only insofar as it would not reduce the depth of the river Thames to less than 5.80 metres below chart datum in the navigable channel. This amendment was agreed by the PLA.

In addition, various interested parties and the ExA raised concerns about the wide extent of the lateral limits of deviation shown on the works plans. In response, the Applicant amended article 5 at Deadline 4 to provide that the centre line of linear works may only deviate by up to 3 metres either side of the centre lines shown on the works plans, and that non-linear works must be constructed within the individual works boundaries shown on the plans. The works plans were amended to reflect this drafting at Deadline 6. To provide further assurance, the Applicant has also amended Requirement 3(1) to provide that the authorised development must be designed and implemented in general accordance with the general arrangement plans.

8.3 Article 58 (Transfer of benefit of Order, etc)

Article 58 provides that the Applicant may transfer the benefit of the DCO to a third party. The provision requires the Mayor of London’s consent for a transfer of any DCO function. This provision has been the subject of a number of comments from interested parties during the examination.

The original form of article 58 was based on a number of precedents, including the London Cable Car Order 2012 and the core principles of similar provisions in the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 and Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002 (which also involved both ‘host’ Boroughs). The Applicant considers the provision is entirely appropriate for a scheme of this nature to allow sufficient flexibility in the contractual arrangements for constructing and operating the Scheme.

Interested parties have expressed concerns about this provision, particularly around the prospect of a transferee being responsible for the user charging powers in Part 5 of the DCO. The Applicant confirmed in its response to SWQ DC2.6 (REP4-052) that it is not proposing to transfer the user charging functions as part of the initial 25 year contract for the Scheme, and that it does not currently envisage transferring these functions in the future. However, given the 120 year design life of the tunnel, it is appropriate for TfL to have the ability to transfer any of its functions under the DCO as the arrangements for the operation of the Silvertown Tunnel may change in the future.

The Applicant considers that article 58 contains two proportionate safeguards as to any transfer of the DCO functions. As mentioned above, the Mayor's consent is required for any transfer of a DCO function (i.e. a power or duty contained in the DCO). In addition, article 58(5) makes clear that any transferee would be subject to the same 'restrictions, liabilities and obligations' which would apply to the Applicant if it was exercising the function in question. In respect of user charging, this means that article 52(1) would apply, meaning a transferee exercising the user charging functions would be bound by the controls contained in the Charging Policies and Procedures document.

Additional concerns were raised about the prospect of any compulsory acquisition and temporary possession powers being transferred, given the uncertainty as to the ability of any transferee to meet any compensation liabilities. The Applicant recognised this concern, and subsequently amended the dDCO at Deadlines 2 and 3 to provide that the Mayor cannot consent to the transfer of any such functions unless the Secretary of State is satisfied that the transferee has sufficient resources to discharge associated compensation liabilities.

8.4 Article 65 (Silvertown Tunnel Implementation Group)

The Applicant's original proposals for the Silvertown Tunnel Implementation Group ("STIG") required the group to vote on matters coming before it in order to provide TfL with a single recommendation on each issue..

Having explored these proposals during the examination with the Boroughs, it became clear that an alternative approach would be preferred by the Boroughs. Accordingly, the Applicant submitted revised article 65 at Deadline 4 to provide that TfL will consult all members of STIG on specified matters and will be required to have regard to all responses received when taking decisions. This revised approach addresses concerns expressed by

the host Boroughs in particular, that the original approach could result in them being outvoted a consequently their views not being taken into account.

Further amendments have been made to this article in response to comments from the Boroughs. The amendments clarify the frequency of STIG meetings and provide for the chair to be appointed by the members.

The Applicant understands the 'host' Boroughs to be in agreement with this approach.

8.5 Requirement 4 (Detailed design of above ground buildings and structures)

The initial draft of the dDCO provided for the relevant planning authorities (i.e. the Royal Borough of Greenwich and the London Borough of Newham) to approve the siting, design and external appearance of four specified works which were considered to be significant permanent above ground buildings and structures.

Having listened to and reflected on concerns raised by the Boroughs, the Applicant made amendments to this requirement to widen the scope of works over which they have approval. The revised drafting is understood to be agreed by the Boroughs and provides that the approval of the relevant authority is required for any permanent above-ground buildings or structures that the Boroughs would ordinarily approve in the conventional planning regime. This excludes any works in relation to which the Applicant would ordinarily have the benefit of permitted development rights. This approach is reflected in the works included in the table within the requirement.

8.6 Requirement 7 (Monitoring and mitigation strategy)

Requirement 7 secures the measures set out in the Monitoring and Mitigation Strategy. It has been expanded significantly over the course of the examination and now provides a substantial range of obligations which secure:

- the identification and implementation of localised mitigation measures before the Scheme opens for public use. The measures must be developed in consultation with STIG members and submitted for approval by the Secretary of State;

- the ongoing monitoring of air quality impacts, an annual review by an independent expert, and (where necessary) the implementation of a scheme of mitigation measures which must be approved by the Mayor;
- the ongoing monitoring of a range of impacts against a series of mitigation triggers set out in the Monitoring and Mitigation Strategy.

8.7 Requirement 13 (Cross-river bus services)

One of the Applicant's key aims in relation to the scheme is use the opportunities provided by the Silvertown Tunnel to operate more cross-river bus services, which has a number of economic benefits.

No DCO requirement was originally proposed in this regard, as the Applicant intended to rely on its existing statutory duties to provide an appropriate London bus network.

However, as the examination progressed it became clear that the Boroughs wished to see a commitment on the face of the dDCO. In light of the complexities surrounding the provision of bus services in London, the Applicant originally intended to secure compliance with a bus strategy via the requirement. As discussions with the Boroughs continued the Applicant reflected that a more robust, specific requirement could be offered. As such, Requirement 13 of Schedule 2 to the dDCO still secures compliance with the bus strategy, but specifically provides that the Applicant must secure the provision of at least 20 buses per hour during peak periods for the duration of the monitoring period (initially 3 years, with scope for it to be extended to 5 years) and thereafter keep these services under review. A new commitment has also been secured, for the Applicant to provide funding for concessionary bus travel to local residents (in accordance with the bus strategy) after the Silvertown Tunnel opens for public use.

To secure the emissions standard of any buses using the Silvertown Tunnel, the requirement also provides that Euro VI standard (or equivalent) must apply to those buses.

8.8 Deemed marine licence (Schedule 12) and protective provisions (Schedule 13)

The Applicant has been engaging with the Marine Management Organisation ("the MMO") throughout the examination and the parties have worked constructively to address concerns raised. As part of this, revisions have been made to the Deemed Marine Licence contained in Schedule 12 to

the dDCO, to ensure the MMO is provided with sufficient protection and oversight.

As to the status of discussions with statutory undertakers on the protective provisions in Schedule 13, please see section 7 above. In summary, the Applicant considers agreement has been reached with the vast majority of the statutory undertakers. Where outstanding issues remain, agreement in principle has been reached but has not been formally captured. Where this applies, the Applicant will update the Secretary of State accordingly.

Constructive discussions have taken place with the PLA, with amendments being made to the protective provisions for its benefit so that they are now agreed. Amendments have also been made to articles 17, 29, 30 and 47 in light of concerns raised by the PLA in relation to the closure of the river Thames to navigation – the PLA is content with these amendments. A new article 69 has also been added, to restrict activities in the river Thames above the new tunnel for its protection. This has also been agreed with the PLA, and the restrictions will take effect in place of the power to impose restrictive covenants (which has been carved out of article 22 as a result). The Applicant considers that there are no outstanding issues between it and the PLA in respect of the drafting of the dDCO (please see the Applicant's position statement on the PLA submitted alongside this document at Deadline 7).

Discussions have also taken place with the Environment Agency ("the EA") on the protective provisions for its benefit. These are now largely agreed, but there remains one point of principle outstanding. The EA considers the Applicant should be liable to bring any river walls 'up' to the appropriate standard when it has control of them during construction, notwithstanding the riparian owners have not done so previously (and the EA has not used its statutory powers to require those owners to do so). As set out in its Deadline 5 Update Note (REP5-004) and its document explaining changes to the dDCO submitted alongside this document at Deadline 7, the Applicant considers it is more appropriate in this context for it to maintain the walls to their existing standard and return them to the riparian owner in their pre-existing state. However, constructive discussions have taken place, such that the Applicant is willing to maintain temporary measures to ensure a 'fit for purpose' flood defence is in place whilst the Applicant is 'on site' (and when the EA cannot use its statutory powers to require riparian owners to improve the river walls as a result of the disapplications of article 3 of the dDCO). Unfortunately, agreement has not yet been reached with the EA. As a result, the Applicant has set out its preferred form of the protective

provisions for the benefit of the EA in Part 5 of the revision 6 of the dDCO submitted at Deadline 7. Discussions will continue with the EA and the Secretary of State will be updated accordingly, although absent an agreement he will need to determine the appropriate form of protective provisions for the EA's benefit.

In addition, there remain a couple of small drafting points not agreed between the parties, around specific definitions and the scope of the indemnity sought by the EA. As mentioned, the Applicant has submitted its preferred form of the protective provisions into the examination at Deadline 7, and it will be for the Secretary of State to determine the appropriate form. Please see the Applicant's document explaining amendments made to the dDCO, submitted alongside this document at Deadline 7 for more information.

Following a request from the Royal Borough of Greenwich and the London Borough of Newham, a new set of highway-related protective provisions was added to Schedule 13 to the dDCO at Deadline 4 to reflect concerns raised by those Boroughs as to the level of control over works which could affect the highways which they are responsible for in the context of article 12. The Applicant understands the Boroughs to be content with the form of these protective provisions.

8.9 Housing and Planning Act 2016 and the Neighbourhood Planning Bill

When the Applicant submitted the dDCO alongside the application, the Housing and Planning Bill was making its way through Parliament. This received Royal Assent on 12 May 2016. The Act amends a number of compulsory purchase (and compensation) enactments which necessitates amendments to the drafting of the 'standard' DCO provisions which have their root in the (now revoked) Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.

The Applicant monitored the commencement of various relevant provisions of the Act (many of which did not come into force until February 2017) closely during the examination and, having regard for the approach taken in the High Speed Rail (London - West Midlands) Act 2017, made amendments at Deadline 4 and to the 'interim' dDCO submitted ahead of the March hearings to appropriately apply the relevant legislation to the DCO.

The Applicant has also been monitoring the progress of the Neighbourhood Planning Bill through Parliament. In anticipation of it being expected to receive Royal Assent in 2017, the Applicant has added this to the list of

enactments disapplied by article 3 insofar as it relates to the temporary possession powers contained in articles 29 and 30 of the dDCO. The reasoning for this is that the temporary possession regime under the Bill is subtly different to that proposed in the dDCO, with the dDCO proposals having been the basis of the Applicant's application, the examination into that application and the Applicant's discussions with third parties. The Applicant considers it would be inappropriate for this new regime to apply in this context.

8.10 Securing of commitments

The Applicant has submitted at Deadline 6 (REP6-063) a revised Mitigation Route Map, which sets out how commitments made by the Applicant are secured. In summary, this is through, predominantly, Part 5 of the dDCO (in respect of user charging), the requirements in Schedule 2 to the dDCO (which in turn secure compliance with certain certified documents (such as the Code of Construction Practice) which contain a number of commitments), the deemed marine licence in Schedule 12 to the dDCO and the protective provisions for the benefit of various parties in Schedule 13 to the dDCO. The proposed legal agreements (please see the section below) play a role in securing certain commitments also.

8.11 Certified documents

The Applicant has taken the approach of securing a number of commitments through the dDCO by including them in documents to be certified under article 64 of the dDCO. As touched upon in the section above, compliance with these documents is then secured by a provision in the DCO (e.g. article 52 or requirement 5 in Schedule 2). This allows a significant number of detailed commitments to be crystallised now and secured, but not contained on the face of the DCO which would be otherwise cumbersome or inappropriate.

8.12 Interested party comments on the dDCO

The Applicant has, throughout the examination, responded to a number of comments made by interested parties on the drafting of the dDCO. Please see, in particular, section 14 of the Applicant's comments on Borough LIRs and WRs (REP2-035) and the Applicant's Update Note submitted at Deadline 5 (REP5-004). It has, where considered appropriate, made consequential amendments to the dDCO, although it should be noted that not all suggestions have been reflected where the Applicant has not considered it appropriate to do so. Alongside each revision of the dDCO, the Applicant has submitted a summary explanatory document setting out the reasoning for changes made to the dDCO. Where relevant, the Applicant has also used this document (as well as responses to written

representations and its post-hearing summary documents) to explain why it does not consider certain proposed changes are necessary or appropriate.

9. LEGAL AGREEMENTS

9.1 Introduction

This section summarises the current position on the legal agreements proposed to be entered into between the Applicant and the Royal Borough of Greenwich and the London Boroughs of Newham and Tower Hamlets.

9.2 Status of legal agreements

As set out in the position statements in respect of each Borough submitted alongside this document at Deadline 7, the Applicant has been engaged in discussions with the Boroughs in relation to proposed legal agreements to secure a number of obligations connected with the proposed Silvertown Tunnel.

The Applicant commented in detail on the proposed legal agreement in its post-Development Consent Order Issue Specific Hearing note (REP6-075) (under agenda item 7). It is important to note that the legal agreements are not proposed to be entered into under section 106 of the Town and Country Planning Act 1990, rather under each Borough's general powers, given the Applicant does not hold an interest in any relevant land at this point. There remain differences between the Applicant and the London Borough of Newham on this point, which the parties continue to discuss.

As set out in REP6-075, the Applicant considers that all of the commitments offered, bar the biodiversity offsetting contribution proposed in the Royal Borough of Greenwich agreement, do not meet the relevant NNNPS policy tests set out in paragraph 4.10 (i.e. are not "*necessary to make the development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind to the development*") but instead secure enhancements which are unlocked by the proposed scheme. Paragraph 3.3 of the NNNPS para 3.3 of the NNNPS states that applicants should consider reasonable opportunities to deliver environmental and social benefits as part of schemes. The legal agreements help achieve this and, as such, the Applicant considers it should receive policy credit for this.

Discussions remain on-going, and the Applicant and the Boroughs will update the Secretary of State in due course as to the status of the legal agreements.

10. CONCLUSION

10.1.1 Section 6 of the Case for the Scheme (APP-093) summarised the benefits of the Silvertown Tunnel Scheme by reference to the Scheme's ability to meet exacting Project Objectives. In particular, the document set out that the Scheme will:-

- i. improve the resilience of river crossings in east and south east London, to cope with planned and unplanned events and incidents;
- ii. improve the road network performance of the Blackwall Tunnel and approach roads;
- iii. provide the infrastructure to enable a step-change in cross-river public transport in east London through new cross-river bus services;
- iv. support economic and population growth in east London and south east London by providing improved cross-river transport links;
- v. integrate with and support local and strategic land use policies north and south of the river; and
- vi. achieve a strong positive net present value.

10.1.2 As this Closing Statement has demonstrated, these claimed benefits have withstood the scrutiny of this examination and the decision maker can be confident that they will be achieved.

10.1.3 There has been some focus on the precise level of commitments to bus services through the Tunnel, the detail of which is reviewed earlier in this document. Even at the base level of services committed to, however, the scheme's project objectives for public transport would be fully met – with significant net benefits for low income user groups and a step change in cross-river public accessibility. Services are expected to grow over time in parallel with the forecast growth in demand. Even at the base level, however, the project objectives are met and the Net Present Value of the Scheme would provide a very strong economic and business case for the grant of consent.

10.1.4 There is no alternative capable of delivering these benefits.

10.1.5 The Scheme has been shown to be fully compliant with the NPS – both in terms of its high level principles and its detail policy requirements. Very substantial agreement has been possible with a wide range of parties, as evidence by the numbers of Statements of Common Ground. Whilst some issues remain outstanding these generally relate to detailed matters which the applicant considers have been largely addressed through the DCO drafting itself, requirements and obligations. In balancing any residual

issues, the ExA will no doubt give substantial weight to the Scheme's policy compliance (at a national and local level) and to its substantial benefits.

- 10.1.6 It is also necessary to recognise that the extraordinary lack of river crossings in east London is in part a legacy of political uncertainty and a lack of complete consensus amongst stakeholders. This recognition was a theme of the report of the House of Commons Transport Committee in their Report "Strategic River Crossings", March 2015 (<https://www.publications.parliament.uk/pa/cm201415/cmselect/cmtran/714/714.pdf>).
- 10.1.7 In particular, section 3 of the Committee's Report recognise that connectivity is sorely lacking in east London, preventing east London from reaching its potential. As a result, the Committee recommended bold decision making and a commitment to infrastructure investment to address the severe disadvantage that years of indecision had caused.
- 10.1.8 Against this background, it is respectfully concluded that the ExA has all necessary material available to itself to make a positive recommendation in this case. Based on the decision making principles of Section 104 of the Planning Act 2008 it is clear that the policies of the National Policy Statement support the application and that there are remarkably few adverse impacts arising from the proposed development compared with the scale of its identified benefits.